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COMMITTEE HEARING
OF THE
CALIFORNIA ENERGY COMMISSION
STOCKTON PORT DISTRICT

SEPTEMBER 18, 2018
SACRAMENTO, CALIFORNIA

BEFORE HEARING OFFICER CARYN HOLMES

Present:

COMMISSIONER KAREN DOUGLAS, California Energy
Commission
COMMISSIONER DAVID HOCHSCHILD, California Energy
Commission
JENNIFER NELSON, Advisor, California Energy
Commission
LE-QUYEN NGUYEN, Advisor, California Energy
Commission
GABRIEL HERRERA, ESQ., Office of Chief Counsel,
California Energy Commission
MONA BADIE, Office of Chief Counsel, California
Energy Commission
DREW BOHAN, Executive Director, California Energy
Commission

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JUSTIN WYNNE, ESQ., Braun Blaising Smith Wynne
STEVE ESCOBAR, Deputy Port Director, Port Stockton

Transcribed by: Carlee Gaylor
eScribers, LLC
Phoenix, Arizona

1 **HEARING OFFICER:** Good afternoon, my name is Caryn
2 Holmes. I'm the Hearing Officer for the proceeding for
3 the complaint against the Stockton Port District for RPS
4 noncompliance.

5 I'd like to welcome everybody here this afternoon.
6 We have the committee for this proceeding here.
7 Commissioner Douglas is on my right and her two advisors
8 are on her right, Jen (phonetic) Nelson and Le-Quyen
9 Nguyen. And on my left is Commissioner Hochschild who's
10 the second member of this committee.

11 I'd like to have the parties introduce themselves,
12 beginning with the moving party's staff.

13 **MR. HERRERA:** Yeah, good afternoon. Gabriel Herrera
14 with the Energy Commission's Office of Chief Counsel.

15 **MS. BADIE:** Mona Badie, also representing staff of
16 Chief Counsel's Office.

17 **HEARING OFFICER:** The Port?

18 **MR. WYNNE:** Justin Wynne with Braun, Blaising,
19 Smith, Wynne, here on behalf of the Port of Stockton.

20 **MR. ESCOBAR:** Steve Escobar, Deputy Port Director,
21 Port of Stockton.

22 **HEARING OFFICER:** Thank you.

23 **MR. BOHAN:** And I would just say, Drew Bohan from
24 the Energy Commission staff.

25 **HEARING OFFICER:** Thank you. The purpose of today's

1 committee conference is to receive evidence admitted by
2 the parties into the record and to hear oral arguments on
3 the legal issues in the proceeding. We'll also take
4 public comment and we may deliberate in closed session.
5 At the end of today's hearing we plan to issue a briefing
6 schedule.

7 Before we begin, are there -- before I turn it over
8 to the Commissioners for any opening remarks, are there
9 comments from either of the parties about this approach?

10 **MR. HERRERA:** Just a quick question, Ms. Holmes.
11 Gabriel Herrera representing staff. Are we going to
12 discuss the fact that we do not have a court reporter and
13 whether we should move forward in the absence of the
14 court reported based upon the WebEx recording?

15 **HEARING OFFICER:** We can talk about that right now.
16 We do not have a court reporter but we do have a WebEx
17 recording. Nonetheless, given that we don't have
18 somebody doing recording in real time right now, we have
19 an option for the evidentiary issues. The committee memo
20 that was issued yesterday, or the memo from me that was
21 issued yesterday, asks staff to provide some additional
22 foundation and additional information about some of the
23 staff's exhibits, and I suggested that you be prepared to
24 discuss that today. Perhaps it would be equally workable
25 for staff to do that in writing after today's hearing

1 since there does not appear to be any dispute about any
2 of the factual issues. Do the parties have a response to
3 that proposal?

4 **MR. HERRERA:** Commission's staff wouldn't be --
5 would welcome that opportunity to file written comments
6 clarifying the questions you had.

7 **HEARING OFFICER:** Do you have a time frame by which
8 you could complete that task?

9 **MR. HERRERA:** We think within a week, just to give
10 ourselves a little breathing room.

11 **HEARING OFFICER:** Okay, I will hear from the Port of
12 Stockton next.

13 **MR. WYNNE:** The Port has no objection to that.

14 **HEARING OFFICER:** Okay, I'll just let you know that
15 specifically what I'm looking for when I am looking at
16 these exhibits is to know exactly what a document is and
17 when it was filed and by whom. For example, in some
18 instances I don't know -- there'll be a document that's
19 entitled the staff assessment, but I don't know whether
20 it was provided to the Port, it doesn't have a date
21 associated with it, so I'm looking for information that
22 provides a complete foundation for all of that.

23 I'm also, as you know from the memo yesterday,
24 interested in making sure that I can attribute a date and
25 a document and an author for each page. In several

1 instances, multiple pages were given for a document that
2 was identified with a single title, several dates were
3 given. So for example, it says that -- the filing said
4 that pages 1 through 50 were filed on March 3rd and April
5 10th. Well, I need to know which pages were filed on
6 which date.

7 So if you can provide that kind of foundation by,
8 you said the -- was it the end of next week, or one week
9 from today?

10 **MR. HERRERA:** I said within a week, but by the end
11 of next week would work well, too.

12 **HEARING OFFICER:** Okay, thank you. We sort of
13 skipped Commissioner comments. Would either of the two
14 Commissioners like to make any comments before we begin?

15 (No audible response)

16 **HEARING OFFICER:** Okay.

17 I'll give a very, very brief procedural history.
18 This complaint was filed on January 8th, 2018. It was
19 filed with a motion to bifurcate. A number of filings
20 were made in the ensuing months regarding the motion to
21 bifurcate and the question of whether or not there were
22 factual disputes. At the end of May, the committee
23 denied the motion to bifurcate and directed the Port to
24 provide evidence supporting some of its factual claims.
25 In July, the parties reached a stipulation as to all the

1 facts. And there was a hearing notice that was posted 10
2 days ago on September 7th, and today is the hearing to
3 address the legal issues.

4 Since we're deferring receipt of evidence into the
5 record, we don't have to talk about that anymore. And
6 with that, I guess I would begin with the oral argument.
7 We said that the parties have 45 minutes each, you don't
8 need to feel compelled to use the entire 45 minutes. You
9 will have a subsequent opportunity to present opening and
10 reply briefs in writing, and you do not have to address
11 the questions in any specific order, but the committee
12 address and you are also, of course, you are also able to
13 address any other issues that you think are important
14 that you'd like the committee to hear.

15 And with that, I'll open with the staff as the
16 moving party.

17 **MR. BOHAN:** Good afternoon. Again, Drew Bohan with
18 the Energy Commission. And you will be hearing mostly
19 from Mr. Herrera and Ms. Badie, but I wanted to just
20 provide a quick framing before they begin.

21 The overall RPS legal framework is complex and not
22 always crystal clear, but in this case it is. POUs are
23 required to adopt an optional compliance measure rule if
24 they wish to use it. Stockton didn't adopt a rule.
25 Stockton didn't send it to us within 30 days of adoption,

1 as required. In fact, Stockton didn't even draft a rule,
2 so there was nothing to be adopted. You'll hear
3 Stockton's argument today that they substantially
4 complied with the law, and we'll demonstrate that they
5 did not.

6 Finally, as we've argued in our filings, we think
7 there are compelling equitable considerations that Energy
8 Commission staff believes the committee should consider
9 before finally adjudicating this matter. With that, I'll
10 turn it over to Gabe and Mona.

11 **MR. HERRERA:** Just really quick, Commissioners.
12 Mona and I are going to handle this in a tag team
13 fashion. She's going to handle the questions dealing
14 with substantial compliance, and then turn it over to me
15 and I will respond to the mitigating factor related
16 questions. Thanks.

17 **MS. BADIE:** Good afternoon. As you're aware,
18 California's RPS establishes increasingly progressive
19 renewable energy procurement targets for the state's load
20 serving entities, including POUs.

21 The complaint before you alleges that the Stockton
22 Port District failed to satisfy two separate RPS
23 procurement requirements for compliance period 1,
24 procurement target requirement, and the portfolio balance
25 requirement. Under the RPS, if a POU does not meet the

1 procurement requirements for a given compliance period,
2 the POU may apply optional compliance measures to satisfy
3 its RPS procurement requirement, and therefore be deemed
4 in compliance with the RPS. This is a generous, optional
5 off-ramp available to POUs dependent on meeting certain
6 regulatory requirement.

7 In the complaint before you, staff allege that the
8 Port sought to apply both the cost limitation and delay
9 of timely compliance optional compliance measures but did
10 not meet the requirements to do so and therefore, the
11 Port should be found in noncompliance with the RPS for
12 compliance period 1 unless the Commission finds that
13 mitigating circumstances allow for the waiver of the
14 Port's noncompliance. Specifically, staff position is of
15 the Port does not have any optional compliance measures
16 to apply that satisfy RPS regulatory requirement.

17 CEC's regulations, enforcement procedures for the
18 renewables portfolio standard for local publicly owned
19 electric utilities, require that adopted optional
20 compliance measures be in place and described in the POUs
21 Renewable Energy Resource Procurement Plan or Enforcement
22 Program for a given compliance period in order for the
23 POU to rely on them to satisfy its RPS procurement
24 requirement. The Port's RPS Procurement Plan does not
25 have any optional compliance measure rules in it, and the

1 port does not have an enforcement program for compliance
2 period 1. Therefore, a finding of substantial compliance
3 is not warranted.

4 Furthermore, this is not a case about deficiency of
5 procedural adoption requirements, although that has been
6 alleged by staff. Consequently, the importance of the
7 distinction between directory and mandatory for purposes
8 of this proceeding is misplaced. Here, staff is not
9 alleging just that the Port failed to adopt the optional
10 compliance measures it seeks to apply, but that the Port
11 doesn't have any optional compliance measures which meet
12 RPS regulatory requirements to apply, adopted or not.

13 Now, onto the committee's questions. Questions 1
14 and 2 of the committee's September 7th hearing notice
15 ask, "What are the elements of the cost limitation and
16 delay of timely compliance options, and which of these
17 elements did the Port satisfy fully or and which
18 partially, and what facts support these conclusions?"

19 I'm going to go into brief detail but provide
20 further details in the written briefing. The cost
21 limitation optional compliance measure requirements are
22 set out in CEC's enforcement regulations, specifically
23 sections 3206 and 3207 of the California Code of
24 Regulations Title 20 and consists of the following
25 elements.

1 First, the POU's optional compliance measure rules
2 must be adopted at a noticed public meeting and must be
3 in place and described in its Renewable Energy Resources
4 Procurement Plan or Enforcement Program for a given
5 compliance period. The POU's adopted rules for cost
6 limitations on the procurement expenditures used to
7 comply with its RPS procurement requirements also must
8 ensure various elements, such as preventing
9 disproportionate rate impacts, crediting costs, and not
10 including any indirect expenses for procurement
11 expenditures.

12 In adopting its cost limitation rules the POU's must
13 also rely on various items, such as their most recent
14 Procurement Plan, procurement expenditures, approximate
15 the cost of building, owning, and operating facilities,
16 and also the potential that some planned resources may be
17 delayed or canceled. Additionally, the POU has to apply
18 only those types of procurement expenditures that are
19 permitted under its adopted cost limitation rule. The
20 POU's adopted cost limitation rules must also include
21 planned actions to be taken in the event the projected
22 cost of meeting its RPS requirements exceed its cost
23 limitation, and the POU must report to the Energy
24 Commission the cost limitation in dollars spent, an
25 estimate of what the total cost for compliance would have

1 been, and actions it took in response to RPS procurement
2 expenditures meeting or exceeding the cost limitation.

3 Since the first requirement applies to both the cost
4 limitation, delay of timely compliance optional
5 compliance measure, I'm going to cover both at the same
6 time. This requirement was not satisfied the Port (sic)
7 fully or partially.

8 First, the Port's RPS Procurement Plan in place
9 during compliance period 1, which is Exhibit 2005, pages
10 145 through 152, does not include any mention of optional
11 compliance measures in it, and the Port did not have an
12 RPS Enforcement Program in place during compliance period
13 1.

14 Second, there is no evidence showing that the Port
15 Board of Commissioners adopted the RPS Procurement Plan.
16 In paragraph 5 of the joint statement of stipulated facts
17 and remaining contested factual issued filed by the
18 parties, the Port agreed that the Port's Renewable
19 Resource Procurement Plan, dated November 20, 2012, does
20 not describe or otherwise include RPS optional compliance
21 measures.

22 Additionally, the November 20, 2012 RPS Procurement
23 Plan was the only Procurement Plan approved during
24 compliance period 1, per the Port's response to staff's
25 September 5th, 27 (sic) data request, which is also part

1 of the record. In paragraph 6 of the joint statement,
2 the Port also agreed that the Port did not have a
3 Renewable Energy Resources Procurement Plan or
4 Enforcement Program in place during compliance period 1
5 describing RPS optional compliance measures, such as a
6 delay of timely compliance or a cost limitation.
7 Paragraph 7 and 8 of the joint statement also confirm
8 that the Port Board of Commissioners did not take any
9 action on or before December 31st, 2015, which is the end
10 of compliance period 1, in the form of adopted resolution
11 ordinance or otherwise take formal action regarding an
12 optional compliance measure for compliance period 1.

13 Furthermore, the record does not contain the
14 evidence demonstrating the Port Board of Commissioners
15 adopted its RPS Procurement Plan dated November 20, 2012.
16 During the staff evaluation of the Port's application of
17 optional compliance measures, staff did ask for
18 documentation and the Port directed staff to Resolution
19 7681, which is part of the record, as well as a notice to
20 attend and -- for a public meeting to go over and receive
21 comments to the plan. However, as stated in the joint
22 statement, paragraph 1, the Port admits that resolution
23 7681 does not include any items related to the
24 Procurement Plan or optional compliance measures. And in
25 the joint statement, paragraph 2, the Port admitted that

1 the December 20, 2012 public meeting was not a meeting of
2 the Port Board of Commissioners and they didn't take any
3 formal action regarding the Procurement Plan or RPS
4 optional compliance measures.

5 As to requirements 2 through 6, staff found that the
6 Port could be said to have partially satisfied these
7 requirements in relation to its general rate cap and
8 reserve policy. But since the Port did not have an
9 adopted RPS optional -- sorry, cost limitation optional
10 compliance rule, none of the elements of this requirement
11 are fully met in relation to the RPS optional compliance
12 measure requirements. The closest thing the Port had to
13 an RPS cost limitation was the general rate cap and
14 reserve policy, and that applied to their entire budget.
15 So staff evaluated the requirements against that general
16 rate cap and reserve policy but did not find that the
17 regulatory requirements were met since there was no
18 actual cost limitation rule.

19 For further specifics facts applied to each element
20 and due to the limited time we have today, I'm going to
21 provide more detail in our briefings and also in the
22 record is the staff evaluation of the Port's optional
23 compliance measures.

24 Now, onto the delay of timely compliance optional
25 compliance measure requirements. They are also set out

1 in sections 3206 and 3207 of the regulation. Now, for
2 the delay of timely compliance optional compliance
3 measure, a POU must show that one or more of the
4 enumerated causes, of which there are three, was the
5 cause of this delay of timely compliance. Here, the Port
6 presented information responding to the second cause of
7 delay, which is that permitting interconnection or other
8 circumstances delayed procured eligible renewable
9 resource projects, or there was an insufficient supply of
10 resources available to the POU. And the further
11 requirements are that the one, again, the POUs optional
12 compliance measure rules are adopted at a noticed public
13 meeting, are in place and described in their Procurement
14 Plan or Enforcement Program for the given compliance
15 period, the rules adopted by the POU prevent the POU to
16 make a finding that conditions exist beyond the control
17 of the POU to delay timely compliance, and the POU
18 demonstrates that it would have met it's procurement
19 requirements but for the cause of delay.

20 Additionally, the POU must show that a prudently
21 managed portfolio risks. And then there's some certain
22 actions that it's including, but not limited to, holding
23 solicitations for resources, outreach, and other such
24 items. Additionally, the POU was required to have sought
25 either its own eligible resources, transmission to

1 interconnect eligible resources, or energy storage to
2 resources. The POU must also have procured an
3 appropriate minimum margin of procurement above the level
4 necessary to comply to compensate for foreseeable delays
5 for insufficient supply, and the POU also is required to
6 take reasonable act measures to procure cost effective
7 distributed generation and allowable bundled RECs.

8 So I already covered requirement 1 in relation to
9 cost limitation, which is the same requirement. As to
10 requirements 2 through 7, I'm again going to be
11 providing, in brief, that explains the facts supplied
12 those elements, and also you have the staff evaluation in
13 the record.

14 Questions 3 and 4 from the committee hearing notice
15 ask what the legal standard should be used for
16 determining whether the Port's actions constitute with
17 substantial compliance, and then also if their -- the
18 procedural requirements for the adoption are directory
19 rather than mandatory, rendering substantial compliance
20 available as a defense, and then also asking that
21 staff -- the parties apply the facts in the record to the
22 standard, and explain why or why not the Port's action
23 meet applicable legal standards (indiscernible)
24 substantial compliance.

25 As to substantial compliance, the doctrine of

1 substantial compliance has been defined and applied by
2 the courts in Hall v. City of Los Angeles, California
3 Supreme Court, stated that courts have held that a defect
4 in the form of compliance is not fatal, so long as there
5 is substantial compliance with the essentials of the
6 requirement, but went on to find that if there is an
7 entire failure to comply with one of the mandates of the
8 statute, substantial compliance cannot be predicated on
9 no compliance and they will not apply the doctrine of
10 substantial compliance. Similarly, in the City of San
11 Jose v. Superior Court of Santa Clara County, the
12 California Supreme Court that held that only where there
13 had been some compliance with all the required elements,
14 the compliance has been defective, will the test of
15 substantial compliance control. However, the court
16 noted, again, that when there has been a failure to
17 comply entirely with a particular statutory requirement,
18 the more liberal test of substantial compliance has not
19 been applied. The court's recognizing quote,
20 "Substantial compliance cannot be predicated on no
21 compliance." Case law on this area, including the case
22 previously cited by the Port, Downtown Palo Alto
23 Committee for Fair Assessment v. City Council Palo Alto,
24 also hold that for substantial compliance, one of the
25 primary considerations is the objective of the statute.

1 What the Committee had before is deficiency in an
2 essential element of the regulations and the statutory
3 and regulatory objectives, and under the case law,
4 substantial compliance cannot be found under such
5 circumstances. 3206 B of the regs, which applies to all
6 optional compliance measures, requires that optional
7 compliance measures be adopted and in place and described
8 in the POU's Procurement Plan or Enforcement Program for a
9 given compliance period if the POU intends to rely on
10 these rules to satisfy or delay it's RPS procurement
11 requirements.

12 Looking to the statutory and regulatory provisions
13 concerning optional compliance measures, we clearly have
14 a theme in the language of requiring that optional
15 compliance measure rules be adopted by the POU. I've got
16 references to section -- regulatory section 3206 A, 3206
17 A2A, A3A, A3C, A3D, A3E, 3206 B, 3206G, these all use the
18 words adopt, adoption, adopting, adoptive, when
19 referencing optional compliance measures. Additionally,
20 the applicable statutory provision public utilities code,
21 section 399.30, also use the word adopt when referencing
22 optional compliance measures.

23 Under the case law, substantial compliance cannot be
24 found when there is no compliance to an essential element
25 or objective, and that is what you have here.

1 Now, onto the question concerning mandatory versus
2 directory requirements. It is staff's position that this
3 inquiry is not relevant here. Also, I would like to
4 point out that the case law encountered allows for the
5 application of substantial compliance to mandatory
6 requirements. The California Supreme Court has held a
7 distinction of whether a requirement is directory or
8 mandatory turns on whether an entity's failure to meet
9 the requirement has an invalidating effect on the
10 entity's subsequent action. If the failure is driven to
11 have an invalidating effect, the requirement is said to
12 be mandatory. And if the failure does not invalidate the
13 subsequent action, the requirement is directory. The
14 distinction of whether a requirement is mandatory or
15 directory is most commonly used in the context of
16 procedural requirements.

17 The basis of staff's allegation of the Port has not
18 met the regulatory requirements for application of
19 optional compliance measures does not just rely on the
20 allegations that there was no adoption of optional
21 compliance measure rules by the Port for compliance
22 period 1. It also relies on the allegations the Port
23 does not have any RPS optional compliance measure rules
24 for compliance period 1, adopted or not. This
25 requirement is not procedural and is not concerned with

1 invalidating a Port action. It is an essential
2 requirement that goes to the purpose behind providing
3 these off-ramps to POUs in the first place. The
4 regulations rightly require that a POUs adopted optional
5 compliance measure rules be in place during the
6 applicable compliance period and allows the Commission to
7 consider the date of adoption of any optional compliance
8 measure rules relied on by the POU. If this weren't the
9 case, then any POU could fail to meet its RPS renewable
10 energy procurement requirements and could claim, after
11 the fact that it is in compliance, by alleging it can
12 apply optional compliance measure rules created after the
13 fact with or without evidence of its rules, such as
14 inclusion in its RPS Procurement Plan or Enforcement
15 Program adopted by its governing body in a public
16 process.

17 So at this time, I'd like to turn it over to Gabe
18 for the remaining questions.

19 **MR. HERRERA:** Commissioners, I will now turn to the
20 mitigating factors. There were four questions, or I
21 should say a series of four questions that the committee
22 asked, so I'll just go through those in order.

23 The first question deals with the mitigating
24 factors -- the additional mitigating factors that the
25 Port raised in its March 30th, 2018 response. There were

1 three. The first one deals with staff delays in
2 evaluating the optional compliance measures for the Port.
3 The second factor deals with the Port's status as a not-
4 for-profit utility and the fact that it serves as an
5 economic driver (indiscernible) to harm to the Port --
6 financial harm to the Port. And then third factor they
7 raised deals with the cost of legal proceedings and
8 potential penalty impacts to the Port, should the Port be
9 found in noncompliance and be exposed to penalties.

10 Let me just quickly address those. First of all,
11 staff does not agree with the Port that it's delays in
12 evaluating the optional compliance measures is a
13 mitigating factor. And the reason is because nothing
14 staff did after the end of the compliance period affects
15 what the Port did before the compliance period ended.
16 While it's true that it took a while for staff to get
17 going on the optional evaluation -- excuse me, the
18 evaluation of the optional compliance measures, it really
19 didn't impact the Port before then. Moreover, the
20 staff -- excuse me, the Port is arguing that by staff's
21 delay, what it did was it prevent the Port from being
22 able to provide relevant information concerning what it
23 did with respect to optional compliance measures or the
24 application of optional compliance measures. And the
25 problem there is that the Port is not asserting or

1 arguing that they were unable to find documents, merely
2 that the potential existed for them not to find
3 documents.

4 Second of all, as Mona might have mentioned, there
5 are regulatory requirements that the Commission has in
6 place. It says once a POU has adopted optional
7 compliance measures, it was obligated within 30 days to
8 provide information concerning the optional compliance
9 measures. So if the Port had adopted optional compliance
10 measures and submitted information within 30 days, it
11 wouldn't have been a problem in terms of being able to
12 locate information to support the adoption of those
13 measures. Additionally, if the Port had wanted perhaps,
14 and earlier assessment as to whether any optional
15 compliance measures that they did adopt, that hose
16 satisfied the Energy Commission's requirements, they
17 could have made a request to the Energy Commission's
18 Executive Director and asked for a review of those option
19 compliance measures. So the Commission's regulations
20 actually set up whereby a POU can request for an early
21 assessment of those optional compliance measures to see
22 how they compare with the Energy Commission's
23 regulations.

24 So the second fact that the Port identified was the
25 fact that it's a not for profit utility and that it

1 serves as an economic driver, both of which gets the fact
2 that it would suffer financial harm if the Energy
3 Commission found that it was not in compliance and that
4 it could be exposed to some potential penalties. We
5 staff think this is a valid factor to consider. In fact,
6 when you look at the Energy Commission's regulations,
7 section 1240 D1 lists out a number of mitigating
8 circumstances or factors that a POU may consider in its
9 response to a complaint. Factor 1241 D1 capital E
10 identifies the financial burden to a POU. Clearly, what
11 the Port has identified are things that could be
12 classified as a financial burden, so therefore should be
13 considered mitigating circumstance.

14 The other factor that the Port identified were the
15 costs associated with the legal proceedings, these
16 proceedings, as well as potential penalties and the fact
17 that these costs could impact viability of the Port and
18 preclude it from procuring additional renewable energy in
19 the future, thereby causing it perhaps to miss subsequent
20 compliance period obligations for RPS procurement. Staff
21 believes that this is also a valid factor to consider.
22 Clearly, this is a financial harm to the District and one
23 that's identified in Energy Commission's regulations that
24 the Port could identify and has identified in its answer
25 to the complaint.

1 So let me now turn to the second question the
2 Port -- the committee raised, and that's dealt with the
3 mitigating factors that are identified in the Energy
4 Commission's regulations, section 1240 D1. Let me just
5 list what those are, and then I'll go through each one of
6 them. First one A, the extent to which the alleged
7 violation has or will cause harm, the nature and expected
8 persistence of the alleged violation, the history of past
9 failed violations, any action taken by the POU to
10 mitigate the alleged violation, and the last one is the
11 financial burden to the POU.

12 So turning to the first of those factors, has or
13 will the violation cause harm? It's presumed that a
14 violation of the RPS requirements by the Port will cause
15 indirect harm to the state because it means that the
16 Port's under procurement of renewable energy results in
17 additional amounts of nonrenewable energy being generated
18 and procured to satisfy the Port's retail sales needs.
19 That thereby increases the negative impacts to the state
20 associated with environmental and greenhouse gas
21 emissions from the nonrenewable energy that was needed.
22 That said however, the state would have suffered the same
23 negative impacts from nonrenewable energy had the Port
24 adopted an optional compliance measure for cost
25 limitations or delay of time and compliance, so this is

1 kind of a net offset. No real harm, no real benefit.

2 The second factor, the nature and expected
3 persistence of the alleged violation. So we know what
4 has happened for the first compliance period, 2011 and
5 2013, but staff really has no basis for assessing whether
6 another violation is likely to occur. We have
7 information from the Port indicating that they have
8 procured sufficient renewable resources during the second
9 compliance period to meet their RPS requirements. We've
10 got information from the Port indicating that they
11 anticipate being able to meet the procurement
12 requirements for the third compliance period, 2017
13 through 2020. That compliance period is still ongoing.
14 Certainly, if the Port was exposed to penalties or
15 additional proceeding costs as a result of litigation,
16 then they would have to redirect resources for that
17 purpose. Arguably, that means that they would have to
18 take resources budgeted for other activities, including
19 possibly the procurement of renewable energy. So there
20 could be a nexus between penalties and additional legal
21 proceedings that could affect the Port's ability to
22 procure additional renewable energy going forward.

23 Regarding past history -- excuse me, history of past
24 violations, since this is the first compliance period
25 that we're dealing with here, there's really no basis for

1 staff to assess whether there's been a history or pattern
2 of violations by the Port. With respect to actions taken
3 by the Port to mitigate the alleged violation, what you
4 see in the staff's evaluation of the optional compliance
5 measures, which is included I believe as Exhibit F, now
6 numbered Exhibit 205, what's included in there is a
7 discussion of the steps the Port took to procure solar
8 energy. They had a development contract that was in
9 place for a 15 to 20-megawatt solar plant to be installed
10 in one of their facilities. After much work associated
11 with that, that project fell through. They had another
12 project lined up, a smaller one, 1.5 megawatts to 2
13 megawatts in size that they also did work on, but that
14 also fell through and ultimately the Port decided it made
15 more economic sense for them to procure renewable energy
16 from the market. So these are measures the staff
17 believes the Port reasonably undertook to satisfy the
18 requirements that never panned out.

19 Let me turn to question number two. So the
20 applicability of the mitigating factors in section 1240.
21 Excuse me, question number three. So this question is
22 the committee pointed out the fact that staff applied a
23 rule of reason with respect to the reporting deadline and
24 other similar procedural deadlines for the Energy
25 Commissions regulations in finding that the Port and

1 other POU's had satisfied these requirements. However, we
2 did not apply a rule of reason with respect to the
3 procurement target requirements of the portfolio balance
4 requirement, in part because those are statutory
5 requirements. Unlike the reporting requirements that are
6 in the Energy Commission's regulations, an additional
7 thing to note is that, with respect to the reporting
8 requirements and some of the other procedural
9 requirements, because the Energy Commission had only
10 adopted its regulations in 2013 and required POU's to file
11 reports starting in 2014, that we provided some degree of
12 latitude to POU's in providing those reports. Those
13 reports were submitted late or they weren't complete when
14 initially submitted, POU's were given an opportunity to
15 resubmit information, make sure it was complete. Again,
16 this was just in an effort to implement the regulations
17 in a reasonable manner. I initially indicated the staff
18 does not think it's appropriate to apply a rule of reason
19 with respect to the portfolio or other procurement
20 requirements.

21 The last question the Port asked -- excuse me, the
22 committee asked deals with the authority the Commission
23 has to consider the mitigating factors raised by the Port
24 and by staff on the Port's behalf to excuse the Port's
25 noncompliance. So I think this authority is implied when

1 you read the statute. The Commission is set up as the
2 trier of facts when it comes to violations. We're
3 charged with determining whether the POU's have satisfied
4 the RPS requirements. Our regulations set the Commission
5 up to prepare a decision and if we find noncompliance, we
6 have to put notice of violation and forward it to the ARB
7 for their assessment penalties. Within the context of
8 that, ARB has indicated that they do not want to
9 rejudge the Energy Commission's findings. We think
10 that's appropriate; they should not serve as an appellate
11 jurisdiction second-guessing our factual findings, and
12 Commission, therefore, should submit to the ARB if
13 necessary, their decisions, findings of fact that address
14 everything, including mitigating circumstances. And if
15 those mitigating circumstances show that there are good
16 reasons for excusing the POU, then staff thinks that
17 there's nothing more for the Commission to do in terms of
18 forwarding a notice of violation or issuing a notice of
19 violation for the Port.

20 In terms of next steps at the conclusion of this
21 proceeding and the Commission's decision, if the
22 Commission decides one, that the Port, their optional
23 compliance measures or their alleged optional compliance
24 measures don't excuse them, and if mitigating
25 circumstances don't excuse the Port's actions, then what

1 staff would recommend is that a notice of violation be
2 prepared and along with the record for this docket be
3 handed over to the ARB so that the Air Resources Board
4 can then asses penalties.

5 If the committee here and the Commission decide that
6 either there are optional compliance measures that the
7 Port adopted and applied and that excuses the Port, or
8 that there are mitigating circumstances that excuse the
9 Port's procurement deficits, then in that case we
10 recommend that the Commission find that the Port is not
11 out of compliance and not issue a notice of violation and
12 not forward the matter to ARB, but rather forward a copy
13 of its decision to ARB for ARB's decision -- or excuse
14 me, for its information. And that concludes my remarks.

15 **MR. WYNNE:** Thank you, good afternoon. So in this
16 proceeding, the Port is asking the Commission to dismiss
17 this complaint on the merits -- on the grounds the Port
18 has substantially complied with both the cost limitation
19 provision and the delay of timely compliance provision.
20 Alternatively, the Port ask the that the Commission
21 dismiss the complaint on the grounds of mitigating
22 circumstances as has been outlined by staff, including
23 the additional provisions that the Port has filed in its
24 response.

25 My plan is to walk through each of the eight

1 questions, but if there's questions throughout I'm happy
2 to respond to those. And before I go into the questions,
3 I think it's worthwhile pointing out that with the
4 governor signing SB-100, the RPS target is now 60 percent
5 by 2030. What that means is in a very short amount of
6 time, over half of all the megawatt hours that's for
7 retail sales in the state are going to be subject to this
8 RPS program, and it has to be from RPS eligible
9 resources. And so if there are issues with the program,
10 if it's inflexible, if it's unfair, it could have a
11 significant impact on the state's economy. And
12 particularly, given the complexity of the regulation,
13 complexity of the statute, the difficulty in developing
14 renewable resources and all the challenges that can come
15 up with that, the Energy Commission needs to ensure that
16 its regulation is fair to the POUs and the communities
17 that they serve, it's transparent in how it's applied,
18 and that it's applied consistently.

19 So for the first questions, I'll take question one
20 and two together. And the first question is, what are
21 the elements of the cost limitation and delay of timely
22 compliance revision, and then what are the facts that
23 support those conclusions? And I think staff has done a
24 good job of walking through the elements. I think we
25 generally agree with that. I will note there is one

1 initial legislative issue is that the cost limitation
2 statute has changed significantly from the -- what was in
3 place during the first compliance period to what is in
4 place now. I think the appropriate standard is to look
5 at the statute as it existed during the first compliance
6 period, but for practical purposes I don't think that
7 there is an actual impact to the compliance determination
8 between the original and current statute on that. As
9 staff has discussed, the POU's are authorized to adopt a
10 cost limitation and delay of timely compliance revision,
11 pursuant to Public Utilities Code section 39930 D,
12 subparagraphs 1 and 2 -- or 2 and 3, and those cross
13 reference a need to be consistent with the relevant
14 provisions under the CPUC section, Public Utilities Code
15 section 39915, subdivision B, C, and that's what's
16 applicable to IOU's, CCA's, and ESG's. Those provisions
17 were the implemented by staff and the regulations, and
18 then in the staff evaluation, which is Exhibit 2005,
19 staff identifies each of the elements and then walks
20 through their assessment of where it's performance was
21 at.

22 Generally, we agree with the way that the elements
23 are characterized in the evaluation, and so I'm just
24 going to walk through each of those elements and discuss
25 them. And the first one under cost limitation is that

1 the cost limitations were adopted in a Procurement Plan
2 or Enforcement Program. And this is one where I think
3 there's a slight disagreement. That is the way that it
4 was implemented in regulations, but if you look at the
5 actual statutory language there is the -- only the
6 obligation that it be adopted. And there's actually a
7 lot of confusion around this concept of a Procurement
8 Plan and Enforcement Program and it's probably just due
9 to the drafting of the statute, and I think we needed to,
10 and staff needed to come up with some reasonable
11 implementation of that to make the regulations make
12 sense, but I do not believe there is an actual
13 requirement that a cost limitation be adopted in a
14 Procurement Plan and that any adoption would satisfy that
15 element.

16 As far as the facts that support that, the Port has
17 acknowledged that there was no express adoption of an
18 Enforcement -- of a cost limitation or delay of timely
19 compliance provision by the Port Commission. However,
20 throughout this period from 2010 through 2013, the Port
21 was regularly updated on the RPS activities of staff so
22 that the development of the solar project, the initial
23 solar project, subsequent development of the solar
24 project, there was a publicly noticed meeting where there
25 was extensive discussions on the RPS procurement

1 activities of the Port. And that included discussions of
2 economic conditions, the need for competitive rates, the
3 clarification that they needed to maintain rates below
4 PG&E's, comparison to PG&E's rates, analysis of cost
5 impacts of future procurement decisions looking forward
6 to 2013 and 2014. There were also regular meetings with
7 individual customers, and the Port is fairly unique in
8 this regard because they have a small number of customers
9 that are tenants of the Port, and so they have a very
10 close relationship with them. And around this time in
11 2012, there were regular meetings with customers because
12 there were issues related to rate changes that were being
13 discussed at the time and as part of those individual
14 meetings with customers, the RPS procurement strategies
15 were discussed.

16 For the second element of the cost limitation is
17 that the cost limitation needs to be set at a level that
18 prevents disproportionate rates. This is really the key
19 most important element of the cost limitation. As far as
20 the Port's demonstration on this, they showed that there
21 was clear direction from the Commission that in order for
22 the Port to continue to function as an electric
23 utilities -- moving forward as an electric utility, it
24 needs to beat PG&E's rates and they needed to be in a
25 healthy financial condition. I think it's a real risk

1 that if those things were not true for any extended
2 period of time, the Port would seriously consider not
3 operating an electric utility anymore, and that has been
4 made clear throughout the entire operation of the Port as
5 an electric utility.

6 As staff has mentioned, the Port does serve an
7 economically disadvantaged area. It's a key driver for
8 bringing jobs to the community. There's high
9 unemployment, high poverty, it's within a disadvantaged
10 community as acknowledged in the CalEnviroScreen 3.0, and
11 then the Port's customers are unique in that they are
12 able to relocate to other Ports. There's other Ports
13 that the Port of Stockton competes with, and because of
14 the nature of the customers, they are more able than
15 typical industrial and commercial customers to relocate
16 on short notice.

17 For the third element of the cost limitation, that's
18 that certain information was considered, including the
19 plan, cost and building of resources, potential for
20 delay.

21 The fourth element must be that -- the cost
22 limitation must be reported in a dollar amount and also
23 the reporting of what would have been required to be in
24 full compliance.

25 The fifth element being that the POU must apply all

1 of it's expenses towards the cost limitation.

2 And then the sixth element being that they can't
3 count indirect cost towards the cost limitation.

4 In the staff's evaluation, they determined that the
5 Port met those requirements. I think maybe there's -- I
6 didn't understand when staff was describing that the Port
7 only partially met those. I believe the actual language
8 in the evaluation throughout is that, but for the fact
9 that the Port did not formally adopt, and then it says
10 the Port addresses these requirements. So I took that to
11 mean that the staff's assessment was that, other than the
12 requirement for full adoption, that staff's assessment
13 was that the Port had fully met each of those elements.

14 The final element for cost limitation is that the
15 Port would specify the actions to take if they met or
16 exceeded their cost limitation. In the implication of
17 exceeding the cost limitation is that there's no longer
18 an obligation to procure additional resources for that
19 compliance period, the Port, after the failure of the
20 first and then the delay and expenses for the second
21 solar project, the Port turned its focus towards the
22 second compliance period and as was described by staff,
23 the Port is in full compliance with the second compliance
24 period requirements and is also on track to meet the
25 third compliance period requirements.

1 And as I mentioned earlier, so SB 350 substantially
2 changed the cost limitation statutory requirement. I do
3 think there is some value in the legislative history of
4 that in the implication being that, I think its elements
5 three through six of what I described, were eliminated.
6 And so it substantially streamlines the cost limitation
7 and clarifies that the real focus is on the
8 disproportionate rate impact.

9 For the elements of delay of timely compliance,
10 again, the first element identified by Staff is that it
11 described an enforcement program or procurement plan. We
12 agree that it must be adopted, but again, I don't think
13 that there's clarity in the statute that it must be
14 described and in place in an enforcement program.

15 The second element being that the POU demonstrated
16 that it would have satisfied the RPS procurement
17 requirement that it if had not encountered the delay.
18 The size of the facility and the portion that would have
19 been attributable to the Port was that is has to exceed
20 the amount that would have been required for them to meet
21 their first compliance period requirements, and if it had
22 been on target, it would have been online in time for
23 those deliveries to help to meet the first compliance
24 period requirements.

25 The third element being the POU prudently managed

1 risks, including a sufficient number of projects. And
2 for a utility the size of the Port, I don't think it's
3 reasonable to anticipate that they would have multiple
4 projects in the development pipeline at the same time.
5 That's something that makes sense for larger utilities.
6 And if you look into the provision, you know, within
7 the -- for the large IOUs, that makes sense, but it's
8 simply not possible for a tiny utility to have multiple
9 projects being developed. The cost of it would be
10 unreasonable, and then the output that they would get
11 from the multiple projects would far exceed what they
12 would need.

13 Element 4 is that the POU sought to develop its own
14 projects, transmission, and energy storage. Obviously,
15 here that is what the Port attempted to do was develop
16 its own project.

17 Element 5 is that they procured at a level above to
18 compensate for foreseeable delays. Again, this is
19 something more tailored to larger utilities that can
20 balance out multiple projects. Here, it's a single
21 resource that they would have been relying on. And so
22 there wouldn't be an ability to procure above what would
23 be needed; and also to secure contracts for energy that
24 they might not need, would be cost prohibitive, as well.

25 And then the sixth element being that the POU took

1 reasonable measures to procure DG and unbundled RECs.
2 They did, after the initial project failed, looked to a
3 1.5-megawatt facility, which would have been, I think,
4 considered distributed generation. And then they did
5 purchase unbundled RECs in the amount that actually
6 exceeded what was allowable under the Energy Commission
7 Staff interpretation.

8 So question 3, is what is the legal standard that
9 you used for determining whether the Port's actions
10 constituted substantial compliance? As the Commission
11 staff stated, there's a great deal of case law on this.
12 I think, that as the Port previously cited, Downtown Palo
13 Alto provides good guidance for this case, and the
14 statement is that, "Unless the intent of the statute can
15 only be served by demanding strict compliance with its
16 terms, substantial compliance is the governing task." It
17 goes on to state that, "In the absence of express
18 language, the intent must be gathered from the terms of
19 the statute construed as a whole, from the nature and
20 character of the act to be done and from the consequences
21 which follow from the doing or failure to do the
22 particular act at the required time."

23 So as we go through and evaluate this, I think what
24 we need to look at is, what is the intent of the RPS
25 program as a whole? What is the intent behind the cost

1 limitations, specifically, and delay of timely
2 compliance, specifically. And then look at the nature of
3 the requirement for there to be adoption for those
4 elements. And then finally, what are the consequences
5 that flow from the failure for there to be this formal
6 and express adoption.

7 As far as the RPS as a whole, Public Utilities Code
8 Section 399.11, provides for findings and declarations
9 and identifies a number of goals for the RPS program.
10 Subdivision b identifies procurement goals, to include
11 increasing the diversity of resources, reducing air
12 pollution, meeting GHG reduction targets, providing
13 stable electric rates, meeting resource adequacy
14 requirements. And then there's a key provision in
15 Subdivision e, paragraph 1, which provides that,
16 "Supplying electricity to California end-use customers
17 that is generated by eligible renewable energy resources,
18 is necessary to improve California's air quality and
19 public health, particularly in disadvantaged communities
20 identified pursuant to Section 39711 of the Health and
21 Safety Code, and the commission" -- here they're
22 referring to the Public Utilities Commission -- "shall
23 ensure rates are just and reasonable and are not
24 significantly affected by the procurement requirements of
25 this article."

1 I think, restating that, the clear purpose of the
2 RPS, overall, is to increase the amount of renewable
3 generation that's serving Californians with a particular
4 emphasis on generation that would be located in, or would
5 have an impact on disadvantaged communities, it needs to
6 be done in a way that limits rate impact.

7 On to the purpose of the cost limitation. So as I
8 mentioned earlier, there's been this streamlining, and I
9 think that that provides evidence that the key element is
10 disproportionate rate impacts. There's not a lot of
11 either legislative history or guidance on what they mean
12 by disproportionate. I think the clear meaning and the
13 obvious use of the term is that there shouldn't be any
14 individual community, or group of rate payers, that's
15 bearing the disproportionate burden or is
16 disproportionately harmed by achieving the RPS.

17 You can see, from the POUs that have adopted a cost
18 limitation, that there's a pattern to the types of things
19 that they look to. One of the key ones is economic
20 conditions. So whether there is high unemployment or
21 high poverty, on the theory that those customers would be
22 more impacted by rate hikes. They also looked at
23 financial challenges for either the utility or the
24 governing organization that the utility is a part of;
25 structural limitations on things like how they compete

1 with the local IOU; and then customers. So if they have
2 one very large customer, or if the customers who are more
3 mobile are able to leave, so that if there was a rate
4 hike there would be this -- a loss of customers that
5 could threaten the operations of the utility. That's
6 another common factor.

7 As far as the delay of timely compliance, I think
8 the purpose of that is relatively straightforward from
9 the terms. Developing renewable resources, particularly
10 in California, is a challenging thing to do, and there's
11 a lot of elements as far as the inner connection process.
12 Transmission -- if transmission needs to be developed;
13 the permitting process; local governments that may
14 prohibit or create restrictions for that make it so that
15 a lot of things can happen. So the project can fail due
16 to no fault of the utility that's trying to develop it.

17 And it serves a very important purpose, because if a
18 utility is fully to blame if a project fails and they
19 face financial penalties, even if they've done nothing
20 wrong, even if they've used their best efforts, that
21 would send, I think, the opposite incentive to utilities
22 in California. And they would move -- instead of trying
23 to develop resources that are close to low, or in
24 disadvantaged communities, or even possibly within the
25 state, they would be more likely to favor resources that

1 are out of state where maybe permitting processes are
2 simpler or they would rely more on existing resources
3 rather than procuring new resources. So without a well-
4 functioning delay of timely compliance rule, I think it
5 would send the opposite incentive of the overall intent
6 of the RPS.

7 So as far as the character of the act, the RPS is
8 implemented through a comprehensive regulatory structure
9 adopted by the Energy Commission for the POU. The RPS is
10 not primarily implemented through adoption by public
11 utility -- a POU governing board. There's the tension
12 that exists in a lot of statutes between the local
13 control that's made by local governing boards and what
14 role the Energy Commission has. And it seems IRP,
15 there's one balance, and in energy efficiency, there's a
16 difference balance. But I think it's clear in RPS,
17 that's probably where the Energy Commission has far and
18 away most complete control of the highest degree of
19 regulatory authority over POUs.

20 The thing that's in contrast if you look at -- an
21 example would be net energy metering. There is no
22 comprehensive regulatory structure for net energy
23 metering that is subject to the Energy Commission. And
24 so the idea of adoption and how that is adopted is
25 essential for the net energy metering program, because

1 that is the only public process where those customers
2 would be able to participate in the development of that
3 program.

4 For the RPS, that was developed -- the absolute
5 regulations were implemented pursuant to the
6 Administrative Procedures Act reviewed by OAL. There is
7 a filing of compliance reports, there's public reports
8 issued by the Energy Commission. And so this is not
9 something that is purely within the -- it's not something
10 that is purely implemented through adoption at the local
11 level.

12 It's also clear that the RPS itself is not primarily
13 about public disclosure; that's not the primary intent of
14 it. And there actually is a relevant regulation that
15 achieve that goal, and that's the power source disclosure
16 requirements implemented and provided to customers
17 through their power content label. That is the primary
18 regulation that provides customers with information about
19 what their utility has as far as resource mix. And to
20 some degree, it approximates RPS so it's not because of
21 differences in how it's reported. It doesn't give you an
22 exact understanding of it.

23 And I think one of the things that's useful to think
24 of is when you're looking at the CPUC's process, they
25 have sort of a similar structure where there's the

1 regulations are adopted through the decisions of the
2 CPUC, and you have, in some degree, parallel
3 organizations. So you have Community Choice Aggregators,
4 which like POU's, are public entities. And all of the
5 same concepts would apply as far as their rate payers,
6 their governing boards. But if you look at these two
7 elements, delay of timely compliance and cost
8 limitations, those are implemented through the CPUC. And
9 there's no requirement that a CCA adopt a delay of timely
10 compliance rules or adopt a cost limitation provision in
11 order for them to argue that they'd be able to exercise
12 those rules.

13 As far as the consequences, here, I think there is a
14 need for customers to be informed. But it's not clear to
15 me what the harm to the Port's customers is and what the
16 harm to customers would be without the express and formal
17 adoption. As long as the customers understand the
18 strategy that their utility has and that it is through a
19 public process that this is being elected, the lack of
20 opportunity to comment on that doesn't seem to lead to
21 any harm.

22 Whereas conversely, if a large penalty was applied
23 to those customers, essentially everything that the Port
24 has argued as far as the delay of cost limitation, would
25 now be -- it would be subject to those penalties; they

1 would have a large potentially rate spike to cover that
2 cost. So the purpose of the -- the opposite of the
3 purpose of the cost limitation would be (indiscernible).

4 The same with delayed of timely compliance; it would
5 send a chilling effect to utilities that are trying to
6 adopt this because of fear that there's -- any technical
7 violation or the Energy Commission would strictly apply
8 and not provide access to that delay of timely compliance
9 rule.

10 And so one final note, Staff mentioned the
11 requirement in the -- or the description in the
12 complaint, that they used the rule of reason with respect
13 to regulations. And they referenced that it was only the
14 nonstatutory requirements. And that's helpful because it
15 wasn't clear to me on reading that what that was limited
16 to, what the standard they applied was.

17 But in that actual section, they say that, "While
18 the Commissions' regulations include other requirements,
19 such as deadlines for filing specific reports issuing
20 public notices," and then they say, "and adopting plans
21 and programs." And so it's not clear to me, because they
22 reference the adoption of plans and programs, but they
23 state that it's only regulatory and not statutory
24 requirements that are in there, there are requirements in
25 statute for a number of these elements. So a better

1 understanding of how they are drawing that distinction,
2 what the standard they're applying, and why there's a
3 difference here.

4 So the fourth question is applying the facts and the
5 record to the standard. So first, with the purpose of
6 the RPS, the generating resource that the Port attempted
7 to build in its service territory, I think clearly meets
8 the goal of the RPS. It would have supported a
9 diversified portfolio; help meet GHG targets; reduce air
10 pollution; it was located in a disadvantaged community;
11 it's located in a local capacity area, to my
12 understanding, so it would actually have an increased RA
13 value; and it's exactly the type of resource that the RPS
14 should be encouraging utilities to develop.

15 As far as the purpose of the cost limitation, the
16 Port has demonstrated that if they would have had to have
17 come into full compliance and pay the additional cost,
18 that would have led to a rate spike, which would --
19 especially at that time in the first compliance period
20 when they were still recovering from the financial
21 downturn -- it would really threaten the viability of the
22 utility as an operation.

23 They've also demonstrated that they -- the local
24 economic conditions and the types of customers they have
25 justify the application of the cost limitation. And it's

1 really the type of utility the cost limitation, I think,
2 was intended to protect.

3 As far as the purpose of delay of timely compliance,
4 they attempted to develop a resource; there were actions
5 outside of their control that led to that not being
6 developed, and so I think it's exactly what the delay in
7 timely compliance was trying to encourage.

8 As far as the nature of the action that wasn't taken
9 and then the consequences that flow from that, well there
10 wasn't an express adoption that used the terms "cost
11 limitation" or "delay of timely compliance". These were
12 both publicly and privately discussed; the concepts
13 behind them were publicly and privately discussed at
14 length. The Commission had regularly developed --
15 directed its Director to operate the utility in a way
16 that maintains rate competitiveness and get the utility
17 back into financial health. The customers were aware and
18 likely, if given the small number of customers and the
19 regular relationship they had with the utility, they were
20 probably more aware than most POU's about what their
21 utility's RPS plans are and what their strategy was for
22 compliance with the RPS.

23 And so it's clear that the customers were informed
24 about the RPS and the strategy; not clear what additional
25 value would have been achieved by formal adoption.

1 And the negative consequences that would result from
2 a financial penalty would be the opposite of what the
3 intent of the RPS is and of these two provisions.

4 Based off that, I think the Port has demonstrated
5 that it substantially complied with the intent of the
6 RPS.

7 So I'm ready to go on to the mitigating factors,
8 unless there's any questions. All right.

9 Regarding question one -- and Staff has provided
10 their response that they've -- my recollection from the
11 opening was that as far as the economic condition and of
12 the consequences for the Port, that they agree with those
13 provisions. There was the objection to the delay in the
14 actual request for information. I think, I mean, just
15 the concept of a statute of limitations exists for the
16 very reason that over time evidence becomes stale; well,
17 the Port hasn't alleged that we would have been able to
18 obtain certain evidence. It did actually hinder quite a
19 bit our ability, because we were asking people to recount
20 conversations they had over five years ago. Some of the
21 staff that had worked on this had retired. And so there
22 has been an extensive period of time since this occurred;
23 so we're five years past the end of the compliance
24 period. So that has been a real impediment to the Port
25 in this proceeding, and I think that it would be

1 reasonable to have this implemented within a few years.

2 And I know that Staff mentioned the fact that
3 there's certain requirements in the regulations. It's
4 worth noting that the regulations were in effect October
5 of 2013. And so that didn't leave a lot of time for
6 there to be a rush to strictly follow, particularly where
7 the regulations themselves deviate or get more specific
8 and prevent more detailed requirements than what's in the
9 statute.

10 As far as the factors that are addressed in question
11 two, I think the Staff's discussion of that is correct.
12 I think that's something that maybe we could provide more
13 response to in written comments.

14 And I think we've already discussed -- so in
15 question three, it's referenced as rule of reason. I
16 still think it would be helpful to understand how that
17 standard is actually applied. I think one concern that I
18 have is there were forty plus utilities. There's this
19 assertion that maybe other utilities were out of
20 compliance with certain requirements, but there was a
21 standard that the Staff applied to that. And I'd like to
22 know what that standard is; how it differentiates from
23 when we've gone through the substantial compliance
24 analysis. Is it the same? Is it different? Is it the
25 mitigating circumstances? And so to ensure that this is

1 consistently applied and transparently applied, I think
2 it would be valuable for Staff to provide more
3 information on that.

4 And then finally, for question four, I think this is
5 a big issue, whether the Energy Commission has this
6 authority. I think this is the first time this is being
7 considered. There's a second part to the question about
8 what would be provided to ARB if the Commission dismissed
9 this due to mitigating circumstances.

10 I think the easy question to that is that nothing
11 would be submitted; I think that would actually be
12 inconsistent with the sort of what was discussed by Staff
13 earlier about needing to limit administrative burden and
14 follow what I think is the obvious structure of the
15 statute. And so there would be no need to transmit
16 anything to Staff -- to ARB, if there's a determination
17 that the complaint should be dismissed due to mitigating
18 circumstances.

19 I think it's helpful to think about the rules of
20 statutory construction. There's a wide number of cases
21 to provide guidance. I think one that would be useful is
22 City of Costa Mesa, which describes the following rule
23 that "statutes must be given a reasonable and common
24 sense construction in accordance with the apparent
25 purpose and intention of the lawmakers -- one that is

1 practical rather than technical, and that will lead to
2 wise policy, rather than mischief or absurdity. In
3 ensuing the statute, the courts may consider the
4 consequences that might flow from original
5 interpretation."

6 Additionally, there's a wide range of cases that
7 discuss the degree of deference that's given to an
8 administrative agency in a penalty proceeding. One
9 example would be Hanna v. Dental Board of California. It
10 says that, "The administrative agency's exercise of
11 discretion as to the discipline to be imposed will not be
12 disturbed unless a manifest abuse of discretion is shown.
13 This rule is based on the rationale that the court's pay
14 great deference to the expertise of the administrative
15 agency in determining the appropriate penalty to be
16 imposed."

17 And as we're thinking about this question, I think
18 it's useful to consider why we have this somewhat unusual
19 structure where the penalty in violation of the
20 determination is bifurcated between ARB and CEC. I think
21 it's obvious that it's not the legislature's opinion that
22 ARB is somehow superior in its ability to consider this,
23 or it somehow has a better ability to assess whether
24 there has been a violation and what the penalty would be.

25 This goes back to 2008, I believe with SB 14, when

1 this language first surfaced, and the obvious
2 consideration is that the Energy Commission did not and
3 still does not have a comprehensive penalty structure in
4 place that would be sufficient for the RPS program.

5 Whereas, ARB does have that penalty authority over
6 POU's under AB 32. And so instead of creating a new and
7 complex regulatory system to give this authority to the
8 CEC, that the legislature instead relied on this existing
9 authority that ARB had. So the -- I think as Staff has
10 described well, the Energy Commission is the one that has
11 developed the regulations, they reformed the
12 verification, they're in contact with Staff; the Energy
13 Commission oversees this process, gathers the facts,
14 considers the mitigating circumstances. So I think the
15 Energy Commission is obviously in the best position to
16 determine if a proceeding -- if a complaint should be
17 waived due to mitigating circumstances.

18 I think it is only if the CEC determines that there
19 may need to be financial penalties, then that gets
20 referred to ARB and then ARB, as the Staff stated, ARB
21 has indicated they don't want to read adjudicate this.
22 They would be relying on the findings of fact and the
23 record that had been installed by ARB.

24 And so I think, to interpret this correctly, it
25 would be unreasonable if the Energy Commission were to

1 refer every violation, even if they determined that there
2 was mitigating factors that excused the noncompliance,
3 and it won, it would be the burden on the agencies. And
4 so ARB would have to regularly receive these even if
5 there was a determination that no penalty would be
6 necessary.

7 Additionally, that would put a burden on the
8 utility. So specifically for Port of Stockton, which is
9 an extremely small utility, if you added financial costs,
10 legal costs of going to yet another agency for another
11 proceeding, it would be significant. On top of that,
12 there's the potential penalty that's sort of hanging over
13 the Port's head on this, and that is in inhibiting their
14 ability to procure future resources. And we're already
15 five years out. This is the first time we're doing this.

16 The ARB has not adopted regulations that would
17 govern this penalty process. I've worked on that for
18 quite some time. And so it's not clear when that process
19 would actually take place. And so if there were to be
20 potentially years more delay on when the Port would find
21 out if it has -- would have to pay a penalty, could have
22 very significant impacts for their ability to comply with
23 future RPS requirements and particularly given the
24 significant changes that occur in 2020.

25 I think that already what the Staff has articulated

1 is that there's a reasonableness and a flexibility that
2 they take in approaching compliance. And so they've, I
3 think, indicated that for some POU's, if there's a
4 deadline that was missed or if something was not
5 included, that was determined reasonable. And I think
6 the same concept flows through to the (indiscernible)
7 Commission, that there needs to be a degree of
8 reasonability and what is actually considered and what is
9 relayed.

10 And so if you took a very narrow and strict
11 interpretation of these requirements, you could have, you
12 know, the Energy Commission having to refer a POU to ARB
13 for a missed deadline on a filing. And I think that for
14 the entire structure of the program, needs to be
15 implemented in a reasonable way, particularly, as I
16 mentioned from the outset that this is such a huge part
17 of the way that POU's operate. It's essential that this
18 function properly.

19 **HEARING OFFICER:** Thank you, both. You each have a
20 little bit of time for reply comments if you would like
21 to make them. I know that Commissioner Hochschild has a
22 question that he would like to ask, and I have one or two
23 clarifying questions, as well. So why don't we do that
24 first and then you can decide if you want to make reply
25 comments.

1 Commissioner?

2 **MR. HOCHSCHILD:** Thank you, everyone, for your
3 presentations and comments. And Justin, really for you,
4 I guess my main question, given that we have 44 publicly
5 owned utilities in the state, a number of them also
6 serving disadvantaged communities and towns, what is it
7 that makes this circumstance different from the other
8 POU's that were able to be in compliance that are also
9 serving similar communities? I mean, that's really what
10 I'm trying to get my hands around.

11 **MR. WYNNE:** Well, I think a number of the
12 particularly smaller POU's that serve disadvantaged
13 communities did use a cost limitation in the first
14 compliance period, and so I think there's consistency
15 there.

16 There is also a significant element about the
17 customer structure. And so if you have largely
18 residential customers, there's a stability in that rate
19 base that makes it easier for slight increases. And it's
20 really this -- I think there's a handful of POU's that are
21 in a similar situation. And I believe most of the them
22 use the cost limitation where you have either a
23 disproportionately large individual customers that really
24 the utility is relying on and those customers having the
25 ability to leave. That's just something that's fairly

1 narrowly applicable to the Port.

2 Also, this is the first compliance period, and so
3 many of the POU's were ramping from zero to 20 percent. I
4 think you saw a pretty significant drop in the number of
5 POU's that used compliance -- cost limitations for the
6 second compliance period. And there's going to be an
7 even greater drop for the third compliance period.

8 So partly, it was just responding to a new
9 requirement, and something that even though the statute
10 didn't come into place until after the first year of the
11 compliance period. And so I don't think that purely the
12 fact that a disadvantaged community is being served would
13 necessarily be sufficient justification. You would have
14 to look at what the rate impacts were and the rate
15 impacts in comparison to the surrounding utility. A
16 number of the POU's that serve disadvantaged communities
17 have rates that are much lower than the surrounding IOU,
18 and so I think that's the reason why a number of them
19 were able to remain in compliance is because they were
20 still labeled (indiscernible).

21 And then there's also just the preferences of those
22 communities. I think there's -- across California
23 there's widespread support for increasing renewable. And
24 I think if customers understand what the rate increases
25 are for, I think it supportive.

1 **MR. HOCHSCHILD:** Okay. Thank you.

2 **HEARING OFFICER:** Commissioner Douglas, do you have
3 any questions?

4 (No audible response)

5 **HEARING OFFICER:** I have one or two follow up.
6 They're mostly in the nature of clarification. Staff, I
7 wasn't quite certain that I understood exactly what you
8 were saying about Commission findings and ARB. If the
9 Commission were to find, for example, that the
10 noncompliance -- that Stockton was not in compliance, but
11 that that noncompliance was waived or excused somehow,
12 you referenced findings. Would those findings be
13 forwarded to ARB, or would you recommend that the
14 proceedings stop with the Commission's decision?

15 **MR. HERRERA:** Caryn, can you repeat that again? I'm
16 sorry, I was focusing on something you said earlier, and
17 missed the critical point there. I apologize.

18 **HEARING OFFICER:** That's fine. If the Energy
19 Commission were to determine -- there were to be a full
20 Commission decision that said, yes, there was
21 noncompliance on the part of the Port of Stockton, but
22 that there were mitigating circumstances that either
23 excused or waived -- and I don't think we need to get
24 into the distinctions between those terms, but there was
25 something that resulted in the noncompliance being

1 waived, the Commission would issue some sort of a
2 decision-making findings. I didn't understand what you
3 said about whether or not that would be forwarded to ARB
4 or not. Are you suggesting that if that happens, that
5 the end of the proceeding is when the Commission issues
6 its Decision?

7 **MR. HERRERA:** That's correct. In that case, the
8 proceeding would end when the Commission rendered its
9 decision. I would suggest that one thing the Commission
10 could do would be, in this situation, to forward a copy
11 of its decision to the ARB for its information only, not
12 for its action.

13 **HEARING OFFICER:** Okay. Thank you. I have a
14 factual question that may be better provided -- may get
15 answered, I suppose, when the Staff provides the
16 additional authentication of its exhibits. And that's
17 the question of when the Port first claimed the delay of
18 timely compliance, when I went through the information
19 that's been provided so far, the earliest reference I
20 could find was January of 2017. If we -- if it's
21 possible to answer that question by the time the hearing
22 ends today, that would be great. If not, I think that we
23 can -- I think it will be clear in the additional
24 information that Staff provides about the exhibits that
25 is already submitted.

1 And then parties have to have time to provide reply
2 comments. I would be happy to hear from Staff if they
3 want to address the confusion that the Port of Stockton
4 expressed about both the reasonableness standard and the
5 question of whether or not all of the elements, other
6 than formal adoption were met by the Port. But we'll
7 begin with Staff, if you have reply comments that you'd
8 like to make, this is the time.

9 **MR. HERRERA:** Great. Thanks. So Staff counsel
10 addressed your question. I just want to clarify a few
11 points. First of all, as our papers made clear, we do
12 not think that Stockton was a bad actor in this case. In
13 fact, Stockton made a bona fide effort to procure
14 renewable resources. They played by the rules, and they
15 procured a lot more than some of the others. However,
16 many of the POU's, as counsel indicated, also used the
17 optional compliance measures, and many of those, the
18 majorities -- in fact, I believe the vast majority, used
19 the cost limitations measure. And all of them -- all of
20 them managed them to follow the rule that requires that
21 they be adopted.

22 Counsel said public disclosure is -- and correct me
23 if I misinterpreted this -- is not the primary purpose of
24 the RPS. That may or may not be true; I don't know.
25 However, public adoption by POU's affords the public and

1 various stakeholders the opportunity to come in and say,
2 hey, wait a minute, we think that's a bad idea. We think
3 you ought to meet the twenty percent, and you're saying
4 you're coming in at one, or two, or five, or nineteen,
5 and we think you should go the whole way. So whether
6 it's the primary purpose of the RPS, it's for others to
7 judge, but it's certainly an important part of it.

8 And finally, I would just say that one of Staff's
9 concerns here is that logically extending this argument
10 that well, we kind of -- we almost -- we admit -- and you
11 heard counsel admit more than once, that they didn't
12 adopt the rule as required. It would be like saying,
13 well, you came in at seventeen percent and seventeen
14 percent is close to twenty and it's almost there, and
15 therefore, Staff would be empowered to say, we find that
16 you're substantially in compliance, and move on. So we
17 just -- we worry that some of these rules are very clear
18 and we think this is one of them. I think counsel has a
19 few comments to make, as well.

20 **MS. BADIE:** So just to add to that adoption
21 requirement, I think it's being downplayed as a procedure
22 requirement. Now, I don't think anyone in this room
23 would disagree that the RPS is very important. And the
24 regulatory framework does leave a lot of discretion and
25 decisions to the POUs. Adoption requires consideration,

1 and approval, and action at the highest levels of
2 governors of each POU. So RPS takes planning; meeting
3 RPS takes planning. Deciding that you can't meet the RPS
4 and you need to do other things such as the allowable off
5 ramps takes planning. And that planning should happen at
6 the governor's level of the POU. And so adoption does
7 guarantee that public consideration, consideration,
8 approval by the highest governing body of the POU, as
9 well as transparency and public participation in those
10 decisions.

11 **MR. HERRERA:** Chiming in on that point, as well, you
12 know, the concept of kind of adopting some rules after
13 the compliance period ends is really kind of an end-run
14 around the statutory framework the legislature set forth.
15 You give the POUs authority. Nobody else can adopt these
16 rules for them; they need to do it. Unlike, say, retail
17 sellers or community choice aggregators or the CPC sets
18 cost limitations. Here, the governing body of the POU
19 sets the rules, right?

20 Allowing them to set the rules on cost limitations
21 after the compliance period ends is a way for POUs to
22 make an end-run over the requirements. So it avoids the
23 need for planning because why plan in advance and adopt
24 rules that allow you to procure less than you're required
25 to procure and still satisfy the RPS requirement, when

1 you can wait to see how you do and then after the
2 compliance period ends, then you can gather some
3 documents and information that suggest you thought about
4 this stuff in advance, and then you now adopt rules after
5 the fact.

6 That's not the way this should work, and the statute
7 clearly gives the governing bodies of the POU's the
8 authority to adopt rules that excuse them from meeting
9 the RPS procurement requirements. They should be
10 adopting those rules in advance during the compliance
11 period and applying them in a meaningful manner. Not
12 doing so after the compliance period ends to justify
13 their procurement shortfall.

14 On the point of rule of reason, what I said, or
15 hopefully what I intended to say, was that there were a
16 number of requirements -- some of them regulatory that
17 required submission of information or action by a certain
18 date. Now, staff didn't hold POU's accountable to these
19 dates because this was the first compliance period, and
20 the regulations had just been adopted, and implementing
21 them and requiring that the POU's satisfy the reporting
22 date or the deadlines just didn't seem fair.

23 And so a rule of reason was applied with respect to
24 some of these reporting requirements, but staff has not
25 applying that rule of reason with respect to statutory

1 requirements like procuring an obligation in order to
2 (indiscernible). These are things that are laid out in
3 the statute. The statute's been in place since 2011.
4 The POU governing bodies know what the statute requires.
5 So applying a rule of reason to their situation, doesn't
6 make sense.

7 I think those are my only points that I need to make
8 on that.

9 **HEARING OFFICER:** Did you want to address the issue
10 that the Port raised about whether or not the cost
11 limitation elements were met in full except for the
12 formal adoption? I believe the Port expressed some
13 confusion about the Staff's position on that.

14 **MS. BADIE:** Thank you. Sorry about that. Okay, so
15 just to clarify, the Staff evaluation found that the
16 first requirement for cost limitation was not met. Now,
17 the other requirements were partially satisfied in
18 relation to the Port's general rate cap and reserve
19 policy, but since that was not a cost limitation, meeting
20 the RPS regulatory requirements, those requirements could
21 not be fully satisfied.

22 **HEARING OFFICER:** Thank you. Port, did you want to
23 take the opportunity to provide some reply comments?

24 **MR. WYNNE:** Yes, thank you. So -- and I think we'll
25 take the opportunity to reply more fully in written

1 briefs, but I think this concept that utilities will be
2 able to use this as an end-run around the RPS, I don't
3 think aligns with the reality of how the RPS is
4 implementing it. The fact that we have POU's -- and this
5 idea that there'd be this bad faith conspiracy so that
6 you would wait until the end to see if you could use a
7 cost limitation, doesn't make any sense because you could
8 just set out the cost limitation, which is why they've
9 been done. And I think to some extent, there was fairly
10 consistent approach and to be frank, a lot of that was
11 become some of the POU's coordinated and so they had a
12 consistent approach. The Port wasn't a part of the group
13 that coordinated and so that's part of the reason why
14 their approach didn't align with some of the other POU's.

15 And additionally, as far as the opportunity for
16 customers -- so a customer would not be able to come in
17 and say, you shouldn't use delay of timely compliance or
18 cost limitation, you should fully comply when something's
19 at the end of a compliance period. So when the --
20 (indiscernible) of reporting to -- in the procurement
21 plan and subsequent discussions, that was near the end of
22 the compliance period. They had already -- the Port had
23 already expended significant amounts of money. They did
24 not have the ability to get into compliance. And so the
25 customer wouldn't be able to say, we disagree with you

1 taking advantage of this provision which would exempt you
2 from penalties; we think you should get in compliance.
3 Essentially, what the customer would be arguing for is, I
4 think you should take penalties, which I don't think
5 would make sense.

6 And it's also not necessarily about the actual
7 application. I think the way it is described is, you can
8 adopt the rules. So you basically set the framework for
9 delay of timely compliance and for cost limitation. And
10 the framework for delay of timely compliance is specified
11 in the statute, so I don't see what the additional value
12 of having a -- essentially what you would have, and this
13 is what's done if you look at procurement plans. I have
14 worked on a number, is you just repeat what's in the
15 statute and you put in a procurement plan. And so that's
16 not necessarily providing the public with a real
17 opportunity to scope what these rules looks like.
18 There's a little bit more discretion in the cost
19 limitation, but fundamentally you have to show that
20 there's a disproportionate impact.

21 As far as the integrity of the program, any time
22 you're out of compliance, there's a significant risk.
23 And the penalties that a POU could face are great. And
24 so there is no incentive to skirt the rules, especially
25 here for adoption. There's no value in avoiding

1 adoption; there's no intentional reason why you would do
2 it. There's things that are adopted all the time, and
3 this could be adopted on a consent agenda. And so the
4 POU isn't gaining anything by not going through formal
5 adoption. And there's no reason, especially now that the
6 rules are well understood, have been implemented, and
7 haven't just been in place a few months, I think across
8 the board, if you look at cost limitations as they exist
9 today, they're adopted ahead of time and they're
10 following procedures.

11 And as far as the comment on the RPS being about
12 planning, the planning did happen before the Commission.
13 So this was a large project and a large expenditure, and
14 I think we could revisit the record, but the actual
15 planning for the RPS was done before the Commission
16 subject to the input from customers. And so the
17 customers were extensively involved and extensively
18 aware.

19 And the actual solar facility would have been
20 located on the roof of the warehouses with the Port. I
21 mean, this was very much connected to and very much a
22 part of the Port -- the customers. I don't think that
23 it's correct to say that the Port didn't involve the
24 customers or didn't provide their customers with a -- of
25 an opportunity to discuss the planning for the RPS

1 (indiscernible).

2 I think that (indiscernible).

3 **HEARING OFFICER:** I would like to now turn to what
4 the briefing schedule would be. We already have a date
5 for Staff to provide the additional foundation for its
6 exhibits. I'll leave it up to the parties. One option
7 would be to say briefs -- opening briefs are due two
8 weeks from this Friday with reply briefs due two weeks
9 later. Or if the parties think it's -- they would like
10 more time, we could do three weeks for the opening briefs
11 and two weeks for reply. I leave it to you to offer your
12 comments as to what works given everyone's time
13 limitations and work schedules. Take your time and look
14 at your calendars.

15 **MR. HERRERA:** If the Committee is willing to give us
16 more time, we would certainly welcome it. We've got
17 other things that we're working on. This hearing kind of
18 snuck up on us, and the work we needed to do just to
19 prepare for it. So looking over to Justin, I think
20 he's -- Mr. Wynne, excuse me. I think he's certainly
21 would welcome more time, but I'll let him speak to that.

22 **MR. WYNNE:** Yeah, I don't necessarily have a
23 proposal. I mean, I think four weeks would be
24 preferable. I don't know if that's consistent with what
25 you're --

1 **HEARING OFFICER:** Four weeks for opening briefs?

2 **MR. WYNNE:** Yeah.

3 **HEARING OFFICER:** So that would be opening briefs
4 would be due on the -- is -- if I'm -- and I'm really bad
5 at numbers, so people, correct me if I'm wrong -- the
6 19th of October. And then the reply briefs would be due
7 the 2nd of November? Did I do the math right? Is
8 that -- did I get the dates right?

9 **MR. WYNNE:** Yes.

10 **HEARING OFFICER:** I always do going from Fridays.
11 We could do it from -- we could split the baby, sort of,
12 and do it from today. And then, in fact, it would be the
13 16th, and the 30th. Should we go with the 16th, and the
14 30th, and sort of split those? So it's three-and-a-half
15 weeks from today.

16 **MR. HERRERA:** That certainly works for Staff if
17 that's what we're directed to do.

18 **HEARING OFFICER:** Is that going to present a
19 hardship for the Port?

20 **MR. WYNNE:** No, that's fine; that works.

21 **HEARING OFFICER:** Okay. And I would ask that any
22 factual assertions that are made in the briefs have
23 citations to the record. We hope that by the time of the
24 Staff filing next week, we'll have all of that cleared up
25 so we that we don't have to -- we know what we're citing

1 to, and the people who are reading the briefs can go find
2 it. And I will issue some sort of -- I don't know if it
3 will be a formal notice or just a reminder afterwards,
4 that there will be briefs due on October 16th, opening
5 briefs and reply briefs due on the 30th.

6 Is there anything else, Commissioner? Would you
7 like to make some closing comments?

8 (No audible response)

9 **HEARING OFFICER:** I would like to thank the parties
10 for their thoughtful presentations. I learned a lot
11 today.

12 Oh, that's right, we do need to take public comment.
13 Is there anybody in the audience who wishes to offer
14 public comment? Is there anybody on webex who would like
15 to offer public comment?

16 (No audible response)

17 **HEARING OFFICER:** Well, then I guess I thank you
18 again for your thoughtful comments, and we look forward
19 to seeing your briefs.

20 With that, this hearing is adjourned.

21 (End of Recording)

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