

## DOCKETED

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CALIFORNIA ENERGY COMMISSION

In the Matter of: )  
 ) Docket 16-RPS-02  
APPEAL BY LADWP RE RPS )  
CERTIFICATION OR ELIGIBILITY )  
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COMMITTEE STATUS CONFERENCE

CALIFORNIA ENERGY COMMISSION

ART ROSENFELD HEARING ROOM

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

TUESDAY, SEPTEMBER 6, 2016

1:30 P.M.

Reported by  
Peter Petty

APPEARANCES

COMMISSIONERS

Robert Weisenmiller, Chair, Presiding Member

David Hochschild, Associate Member

ADVISERS

Jana Romero, for Commissioner Weisenmiller

Ken Rider, for Commissioner Hochschild

HEARING OFFICER

Paul Kramer

CEC STAFF

Courtney Prideaux Smith, Deputy Director,  
Renewable Energy Division

Mona Badie, Staff Counsel

PETITIONER LADWP

Felix Lebron, Deputy City Attorney, City of Los  
Angeles

Jean-Claude Bertet

Louis Ting, Director of Power Planning and  
Development

Priscila Kasha, Supervising Attorney,  
Los Angeles City Attorney's Office

APPEARANCES (cont'd)

OTHERS

Kourtney Vacarro, Chief Counsel

Ralph Lee, Staff Counsel

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P R O C E E D I N G S

SEPTEMBER 6, 2016 1:40 P.M.

CHAIR WEISENMILLER: Welcome to today's hearing on the LADWP RPS appeal. This is a status conference and we certainly want to hear from the parties today.

Paul, why don't you go ahead.

HEARING OFFICER KRAMER: Okay. Good afternoon. This is Paul Kramer, the hearing officer. For those of you on the phone, at the dais here today we have our Chair, Robert Weisenmiller, who just spoke. To his left is adviser Jana Romero. And then to my right, Commissioner Hochschild and his adviser Ken Rider.

So let's just take a roll beginning with the staff since they are in the room with us here.

MS. SMITH: Good afternoon. This is Courtney Smith, the deputy director for the Renewable Energy Division at the California Energy Commission.

MS. BADIE: Good afternoon, Mona Badie, counsel for staff.

HEARING OFFICER KRAMER: Okay. And then the applicant or appellant LADWP.

MR. LEBRON: Good morning commissioners,

1 this is Deputy City Attorney Felix Lebron on behalf  
2 of LADWP, and I'm in a conference room on WebEx and  
3 I have two additional attendees for today's status  
4 conference.

5 MR. BERTET: Jean-Claude Bertet, City  
6 Attorney's Office DWP.

7 HEARING OFFICER KRAMER: Could you spell  
8 your name for us?

9 MR. BERTET: (spells name)

10 HEARING OFFICER KRAMER: Okay. Thank you.  
11 Is there anyone else on the telephone who wishes to  
12 identify themselves?

13 MR. TING: Louis Ting. (spells name)

14 HEARING OFFICER KRAMER: Thank you. And  
15 you're with LADWP, correct?

16 MR. TING: That's correct, I'm the director  
17 of power planning and development.

18 HEARING OFFICER KRAMER: Okay. Does anyone  
19 else on the telephone wish to identify themselves?

20 MS. KASHA: Yes, this is Priscila Kasha,  
21 I'm with the Los Angeles City Attorney's Office, and  
22 I am the supervising attorney for the attorneys in  
23 the power group at DWP.

24 HEARING OFFICER KRAMER: Could you spell  
25 your last name for us?

1 MS. KASHA: (spells name)

2 HEARING OFFICER KRAMER: Thank you.

3 Okay. For those of you on the telephone,  
4 we'd appreciate it if you would mute yourself. If  
5 you have a touchtone telephone you can use star six.  
6 If you're using your computer you can just right  
7 click on yourself in the participants list and  
8 select the option to mute yourself. We seem to be  
9 getting a fair amount of background noise today so  
10 we appreciate your help in reducing it.

11 The main purpose of today's meeting is for  
12 the committee to deliberate in closed session, but  
13 before doing that we will take, as is our obligation  
14 under the open meeting laws, public comment. And  
15 I'll say it again in a minute but it's likely we  
16 will have something to say coming out of closed  
17 session, so what we'll try to do is pick a time so  
18 you can go do other things and then come back and  
19 we'll make those announcements.

20 Going through the place holders on the  
21 agenda we have no pending motions so there's nothing  
22 to do there.

23 There is no specific public business at  
24 this part of the committee conference, but again, we  
25 may have something to talk about later.

1           So let's open up the public comment portion  
2 where members of the public and other interested  
3 persons and entities may speak up to three minutes  
4 on a matter appearing on this agenda.

5           Does anybody in the room wish to make a  
6 public comment? I don't see anyone.

7           Anybody on the telephone?

8           Did you mute anyone, Mr. Lee?

9           MR. LEE: I did not mute anyone.

10          HEARING OFFICER KRAMER: Okay. I'm told  
11 that we did not mute anyone so you muted yourself,  
12 so if you want to make a public comment please  
13 unmute yourself and let me know.

14          Okay, just hold on a second.

15          MR. LEBRON: Hearing Officer Kramer, this  
16 is Deputy City Attorney Felix Lebron. Before you  
17 break into closed session LADWP had one comment they  
18 wanted to raise with the committee.

19          HEARING OFFICER KRAMER: Okay, just give me  
20 a second, we're trying to pick a time for you to  
21 come back and then we'll take that.

22          MR. LEBRON: Okay. Thank you.

23          HEARING OFFICER KRAMER: Okay, go ahead,  
24 Mr. Lebron.

25          MR. LEBRON: Thank you. The issue that

1 LADWP wants to raise had to do with the filings made  
2 by both parties on September 1st in response to the  
3 committee's scoping order.

4 LADWP had a concern regarding the evidence  
5 filed by Energy Commission staff. In particular,  
6 staff did not file a single witness declaration in  
7 support of the exhibits that are referenced in  
8 staff's response. And we wanted to raise the issue  
9 with the committee because this proceeding is an  
10 evidentiary hearing, and while we acknowledge that  
11 the evidentiary standards are less formal than the  
12 evidentiary rules we have in state or Federal Court,  
13 there are still basic evidentiary requirements that  
14 apply under California Code of Regulation Section  
15 2012, as was noted during our July 13th, 2016,  
16 status conference.

17 In particular, staff included as exhibits a  
18 number of third party contracts to which staff is  
19 not a party and there's no foundation laid as to  
20 those contracts. They're not a party to them. We  
21 don't know if those are complete and accurate sets  
22 of the contracts.

23 LADWP has not been given access to the  
24 complete set of files related to those contracts,  
25 and staff uses those third party contracts to

1 essentially argue that these other third parties  
2 establish and fulfill the criteria under the third  
3 edition guidebook. So essentially they're hearsay.  
4 They are being offered to prove the truth of the  
5 matter asserted.

6           So we wanted to flag the issue, one,  
7 regarding the admission of any witness declarations,  
8 but two, as it applies to this category of third  
9 party contracts that LADWP wants to raise issue with  
10 the committee but also intends to raise at some  
11 point, whether it's included and our reply or as a  
12 separate document with our reply, either a set of  
13 evidentiary objections or a motion to strike.

14           We think those third party contracts are  
15 irrelevant to this proceeding. I mean, the committee  
16 here has been asked to interpret a set of statutes  
17 as applies to specific LADWP contracts and make  
18 determinations whether those contracts satisfy the  
19 requirements under the rules at the time.

20           And to the extent that the committee is  
21 interested in litigating these other third party  
22 unrelated contracts, then LADWP is entitled to  
23 discovery on those contracts including full copies  
24 of the documents to ensure that the staff hasn't  
25 just cherry picked certain documents and to have an

1 opportunity to depose parties or the companies that  
2 are parties to those contracts.

3 And that's all. We just wanted to raise the  
4 issue for the committee.

5 HEARING OFFICER KRAMER: Okay. Thank you.

6 MR. LEBRON: Thank you.

7 HEARING OFFICER KRAMER: Staff, do you want  
8 to respond at all?

9 MS. BADIE: This is Mona. So as to the  
10 contracts, they're being presented as documentation  
11 concerning staff's interpretation of the rules under  
12 the program, and so they're not being offered for  
13 the contracts themselves as evidence.

14 And then let's see, witness declaration.  
15 All the documents presented as documentation of  
16 staff's response to the committee questions stand  
17 for themselves. A lot of them are public documents.  
18 But if the committee decides that we need to file  
19 declarations for documents that have been adopted  
20 pursuant to public proceedings and such, then we'd  
21 be happy to do so.

22 HEARING OFFICER KRAMER: Okay. Well,  
23 there's no motion before us and we're just first  
24 hearing about this today so we're obviously not  
25 going to do anything by way of a ruling today. And

1 similarly, you've had very little time to consider  
2 it.

3 We will see if those documents are down the  
4 road going to be important, but I think staff should  
5 be ready to, and perhaps even thankful for the  
6 preview of potential objections and be prepared to  
7 address those at the appropriate time.

8 Okay. We think we will only need an hour  
9 for the closed session. And even if we finish early,  
10 we'll come back down at ten minutes to three o'clock  
11 so that people don't have to hang on the telephone,  
12 and we will report out anything that we need to  
13 report to the parties.

14 We're going into closed session pursuant to  
15 Government Code Section 11126(c)(3), which allows a  
16 state body, including a delegated committee such as  
17 this, to hold a closed session to deliberate on a  
18 decision to be reached in a proceeding the body was  
19 required by law to conduct.

20 So we will see you back here and on the  
21 telephone at 2:50 p.m. Thank you.

22 (Adjourned to Closed Session 1:51 p.m.)

23 (Reconvened at 2:53 p.m.)

24 HEARING OFFICER KRAMER: It's a little bit  
25 after 2:50. The LADWP appeals committee has returned

1 from its closed session, which ended about 15  
2 minutes ago. We do have some announcements.

3 The parties are ordered to confer and file  
4 a joint statement of stipulated facts no later than  
5 October 5th, and that's about two weeks after the  
6 reply filings are due.

7 In addition, each party is ordered to file  
8 individual statements describing any facts they  
9 believe are necessary to the resolution of the  
10 issues, but about which it cannot reach agreement  
11 with the other party. If there are no disputed  
12 facts, you do not need to file a statement.

13 And for your information, the committee has  
14 reserved time on its calendars for future events on  
15 Thursday, October 20 in the afternoon; Monday,  
16 November 14 in the morning; Tuesday, November 22 all  
17 day; Wednesday, December 7 in the morning; and  
18 Thursday, December 15, that's again all day.

19 The parties are requested to inform us of  
20 any conflicts that these dates may present for  
21 yourselves or potential witnesses.

22 The committee may have additional questions  
23 regarding the BC Hydro issues, but we won't know for  
24 sure until after we receive and evaluate your reply  
25 filings, so at this point that's just basically a

1 heads up.

2 And staff is encouraged to address LADWP's  
3 concerns about the foundation for the documents that  
4 Mr. Lebron mentioned earlier today in a declaration  
5 meeting evidentiary standards or another appropriate  
6 method.

7 And I will file a memo on the docket either  
8 late today or in the morning repeating all this so  
9 that if you didn't write it all down you don't need  
10 to worry.

11 MS. VACARRO: Again, Kourtney Vacarro,  
12 Chief Counsel.

13 Mr. Kramer, if you could clarify that last  
14 statement for staff when you ask them to address  
15 LADWP's concerns. Are you actually meaning address  
16 in the sense of respond to or are we asking staff  
17 that if they intend to have the committee rely on  
18 any of the submissions for the most recent briefing  
19 to submit them consistent with evidentiary standards  
20 and do so by way of a declaration. So if you could  
21 clarify that for the record I think that would be  
22 helpful.

23 HEARING OFFICER KRAMER: Yeah. Well, we're  
24 not formally ruling on objections. We're  
25 anticipating, as you should, that if the state of

1 the record remains as it is but they may raise those  
2 at some point in the future. And the objections  
3 appear to be well taken; therefore, we're suggesting  
4 that you take the opportunity to cure any defect in  
5 your evidence by, for instance, addressing the  
6 foundational questions regarding those documents,  
7 and a declaration seems like the most likely  
8 candidate for that, but depending on the document  
9 there may be another way to achieve that.

10 Did that answer your question, Ms. Vacarro?

11 Thank you.

12 Okay. With that, somebody want to say  
13 something? Okay. Public comment was earlier, so we  
14 are adjourned and we will see you at -- there are no  
15 current committee events that have been noticed to  
16 this point, but we will be issuing notices as the  
17 schedule solidifies as we review your future filings  
18 and your statements of stipulated facts.

19 So Thank you, we're adjourned.

20 (Adjourned at 2:57 p.m.)

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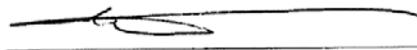
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**REPORTER'S CERTIFICATE**

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of September, 2016.



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PETER PETTY  
CER\*\*D-493  
Notary Public

CERTIFICATE OF TRANSCRIBER

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

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

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



September 12, 2016

MARTHA L. NELSON, CERT\*\*367