



CITY OF BURBANK  
OFFICE OF THE CITY ATTORNEY

275 East Olive Avenue • P.O. Box 6459 • Burbank, California 91510-6459  
818.238.5700 • 818.238.5724 FAX

June 27, 2014

RECEIVED  
CITY CLERK'S OFFICE  
2014 JUN 27 AM 9:54  
BY: [Signature] CITY CLERK  
DEPUTY

Los Angeles Office of the City Clerk  
200 N. Spring Street, Room 360  
Los Angeles, CA 90012

Re: Council Item No. 14-0738 (Los Angeles Department of Water and Power Amendment No. 1 to Open Access Transmission Tariff, Agreement No. BP-01-017)

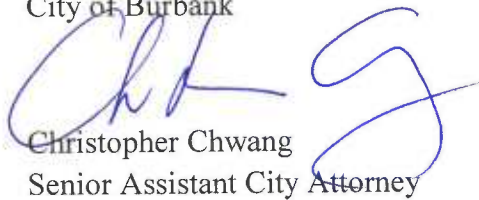
Ladies and Gentlemen,

The City of Burbank respectfully requests to have the following documents be part of the administrative record for Council Item No. 14-0738:

1. Transcript of statements made by Burbank to the Los Angeles Department Water and Power Board of Commissioners on June 3, 2014 (attached as Exhibit A)
2. Transcript of statements made by Burbank to the Energy and Environment Committee of the Los Angeles City Council on June 27, 2014 (attached as Exhibit B)

Regards,

City of Burbank

  
Christopher Chwang  
Senior Assistant City Attorney

Encls.

Exhibit A

## Statement to the LADWP Board of Commissioners

### **I. FLETCHER INTRODUCTION:**

- My name is Fredric Fletcher I am the Assistant General Manager at Burbank Water and Power.
- I am here on behalf of the City of Burbank to express our deep concerns about the proposed Tariff and the Tariff process. With me are representatives from Burbank, the Burbank City Attorney's Office and Burbank's legal counsel on Federal Energy matters.
- I will address why we are here. Chris Chwang from our City Attorney's office will address the problems that we have had with the LADWP Tariff Process and Jon Stickman from the law firm of Duncan & Allen in Washington DC will address the many problems that we have with the proposed Tariff.
- Hopefully, after our presentation, you will agree that the proposed Tariff is not ready to be adopted but instead needs to be returned to the Stakeholder process so that the concerns we have raised can be resolved.

### **II. WHY THE TARIFF MATTERS TO BURBANK (Fred Fletcher)**

- As I am sure you are aware, it is very unusual for us to be here raising concerns. We are here because the rates and terms in the LADWP Tariff have a significant impact on Burbank and its residents.
- Burbank's System is located within the LADWP Balancing Area and Burbank often has to rely on LADWP and its Tariff to provide Burbank with services so that Burbank can serve its residents. It is important to Burbank that LADWP's rates are aligned with Federal Energy Regulatory Commission's Practices relative to rate making, recognize our jointly owned assets, as well as being nondiscriminatory and fair.
- We would like to be able to review the Cost of Service, ask questions, have questions answered and be assured that the rate in the end is a fair and non-discriminatory.
- Therefore, I ask that you table the resolution and require the department to take the time to address our concerns so that the Tariff and its associated rates makes sense for LADWP and for its customers.
- Mr. Stickman, Burbank's FERC counsel, will discuss the problems with LADWP's Tariff and its rate structure.

### III. PROBLEMS WITH THE TARIFF PROCESS (Chris Chwang)

- My name is Christopher Chwang and I am a Senior Assistant City Attorney at Burbank.
- LADWP has provided only one stakeholder meeting, on November 15, 2013, for stakeholders to raise any concerns on the Tariff. At this meeting, LADWP told us there would be no subsequent forums to discuss the Tariff, other than the LADWP Board of Commissioners Meeting. We have sent letters to LADWP requesting that our respective staffs work through these issues, but LADWP has refused to do so. This is the reason we are here today.
- The tariff is a highly technical document that cannot be understood through a single set of questions. Moreover, LADWP provided a number of non-responsive or incomplete answers to our questions.
- The last time LADWP adopted a Tariff was 2002, so we feel that LADWP should take the time to address these very significant concerns to ensure that the Tariff complies with federal laws.
- The Tariff is subject to FERC jurisdiction if it fails to conform to federal laws. We believe it is in everyone's interest that LADWP adopt a process that is consistent with federal policy and established practices.
- Under Federal law, there is a process that all transmission providers, including LADWP, must follow when it increases its rates or changes its tariff. This includes providing stakeholders a meaningful, iterative process that includes more than the exchange of one set of questions. Unfortunately, the stakeholder process thus far has fallen short of customary industry practices and FERC policies.
- I'm running out of time, but I will leave you with this question. Would the Board object to LADWP being subject to a Tariff under conditions like this, where LADWP's staff was given only one opportunity to voice their concerns and when they did these concerns were ignored?
- We would be happy to share the list of questions that we did not get answers to and the concerns that we believe need to be addressed before this tariff should be implemented.

#### **IV. PROBLEMS WITH THE LADWP TARIFF**

**My name is Jon Stickman and I am Burbank's FERC Counsel. I have grave concerns about the content of the proposed Tariff and its rates.**

- **The Tariff rates are unlawful because they include costs for facilities that Tariff customers will have no right to use. What this means is that LADWP is subsidizing its retail customers by having Burbank residents pay for facilities that are used exclusively by LADWP's retail customers.**
- **Besides violating the long held ratemaking principle of cost causation, this subsidization also violates federal law that requires LADWP to provide its Tariff customers with transmission service of the same quality and type and at the same rates that it provides and charges to itself.**
- **This preferential treatment does not end with the Tariff rates. The Tariff also discriminates against Tariff Customer by allowing them to only purchase transmission service for up to 3 yrs even though LADWP allows its generators and other entities to purchase transmission on a longer term basis. This violates federal law (FPA Section 211A) and would not withstand review by FERC.**
- **The proposed Tariff also would not withstand review by FERC because it strays significantly away from FERC's pro forma Tariff and the associated directives.**
- **Because I am almost out of time, I will not be able to provide you with a detailed description of Burbank's many other more technical concerns. Therefore, I will leave you with a quick list of these concerns.**
  - **The Tariff fails to provide customers with network service, a service which is required by the pro forma Tariff.**
  - **The Cost of Service relies on different years to determine costs, instead of using consistent years to do so.**
  - **The Cost of Service ignores certain transmission revenues LADWP receives from existing contracts and thereby appears to allow LADWP to double recover for these costs.**
  - **The Tariff inappropriately uses incremental rather than embedded costs to determine the Tariff rate in violation of FERC precedent.**
  - **The Tariff also illegally provides LADWP's generators a competitive advantage over the generators owned by its tariff customers.**
- **I believe that LADWP should take this Tariff back to the stakeholder process so that we can address and resolve these issues.**
- **Thank you for your time.**

**Exhibit B**

## **Statement to LA City Council – E&E Committee**

**INTRODUCTION:** Chairman Fuentes and Members of the Council, my name is Christopher Chwang. I am a Senior Assistant City Attorney at the City of Burbank. I am here on behalf of Burbank to express our objections to the proposed Tariff – in terms of both process and substance. The Tariff is subject to FERC jurisdiction if it fails to conform to federal laws. It is in everyone’s interest that LA adopt a Tariff that is consistent with federal policy and established practices.

### **I. Process**

- Under Federal law, there is a process for all transmission providers, including LA, to follow when it increases its rates or changes its tariff. This includes providing stakeholders a meaningful, iterative process that includes more than the exchange of one set of questions.
- LADWP has provided only one stakeholder meeting in November for their process. At this meeting, we were told that there would be no subsequent forums to discuss the Tariff. LADWP provided a number of non-responsive or incomplete answers to our questions. We also have not received the model used to determine the rates, so we cannot verify appropriateness of the rates. We have sent letters to LADWP requesting that our respective staffs work through these issues, but it has refused to do so.
- The aforementioned process would not satisfy customary industry practices or FERC policies.

### **II. Substance**

- As to substance, there are problems with the Tariff’s rates and terms.
- The Tariff rates violate the FERC principle of cost causation by including costs of facilities that Tariff customers have no right to use. It also fails to give Burbank credit for certain transmission projects that Burbank and LA have been joint participants.
- The proposed Tariff deviates from the FERC pro forma OATT in ways that discriminate against Tariff customers. One is the absence of Network Integration Transmission Service. Another is failure to offer re-dispatch service to its Tariff customers. It also limits Tariff customers’ transmission service for up to 3 years, but does not apply this rule to itself. We respectfully disagree with the interpretation of the 3-year IRS rule offered at the Board meeting. There are other provisions which are inconsistent with the pro forma OATT and result in other forms of discrimination.

**CONCLUSION:** *We respectfully request that the OATT be tabled for consideration at a later time, but we have no objections to the approval of the interconnection procedure and agreement.*