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February 29, 2016

Energy and Environment Committee
Room 1010, City Hall
200 North Spring Street
Los Angeles, CA 90012

Los Angeles City Council
Room 340, City Hall
200 North Spring Street
Los Angeles, CA 90012

re: Comment on Energy and Environment Committee Agenda Item Number 1: Proposed Power Rate Ordinance and related matters.
Special Committee Meeting of March 1, 2016 at 2:00 p.m.

Comment on Los Angeles City Council Agenda Item Number 10: Proposed Power Rate Ordinance and related matters.
City Council Meeting of March 2, 2016 at 10:00 a.m.

Honorable Council Members:

I am one of the attorneys representing the Plaintiffs in the pending consolidated class action litigation *Eck v. City of Los Angeles, et al.*, Case No. BC577028 in the Superior Court for the County of Los Angeles, challenging the past and ongoing practice of the City of L.A. in overcharging its electricity customers to create "surplus" funds which are then transferred to the City's general fund for general expenditures. I am also counsel for the plaintiffs in *Citizens for Fair REU Rates v. City of Redding*, currently pending review in the California Supreme Court, No. S224779, a case challenging a similar practice by that City in overcharging power rates to create and transfer funds to Redding's general fund for general purposes. Both cases seek to enforce the mandate of Proposition 26, enacted by the voters in November of 2010, that prohibits the collection of "disguised taxes" in the form of fees or rates. The proposed increase in electrical power rates that you are now considering for approval only perpetuates and exacerbates the wrongful collection and transfer of "disguised taxes" we have complained of in the forgoing cases. For the record, we wish to make it known that we object to the increase in power rates, and we urge you to reconsider the matter.

"Layering of rates" is an illusion that does not circumvent Proposition 26.

After the adoption of Prop 26 in 2010 the City clearly recognized that it could not go forward with further electric rate increases that explicitly included a

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component to generate the funds (roughly $250M to $300M) that are "traditionally" transferred over to the City general fund for general purposes. What has followed is a disingenuous attempt to evade Prop 26 by pretending that the electrical rate structure in effect on November 3, 2010 is left intact and unchanged – a purported "base" rate that the City believes it can use as an ongoing source of revenues [*illegal taxes*] to transfer to the general fund – while adding incremental charges or "layers" of additional rates on top of the pre-Prop 26 base rate to pay for increasing costs of operating the City's power system. Thus the ratepayers in L.A. are asked to subscribe (unknowingly) to the fiction that the single bill each receives monthly for power service to that single customer is now a combination of a power rate from the past and power rate(s) from the future, jumbled together, requiring a single payment for the total, but allowing the City to continue to extract 8% or more as a tax transfer to the general fund. This emperor has no clothes.

1. Start with the obvious. A single payment for a single service at a new rate that is given discretionary approval by the City is a *new rate*, regardless of how the City attempts to characterize the components of the rate. The trigger for applying Prop 26 is simply that the City has applied its attention and discretion to create and impose a new electric rate structure. The only way for the City to avoid Prop 26 would have been to walk away from the rate setting process after Nov. 3, 2010 – never to revisit rates again. Even a decision made by the City today to impose rates that are the same as they were in the past would be a *new* rate, because it reflects the City's new/current exercise of discretion to determine what the rates should be. When *you* (meaning both DWP and the Council) exercise your powers of rate setting you engage the legal and Constitutional duties you have *today*, including your obligation to abide by Prop 26 to stop imposing illegal taxes on the L.A. ratepayers.

2. The pre-Nov. 3, 2010 rates are not isolated, frozen, or segregated. The City does not even live up to its own fiction. In the rate design process, the cheaper costs of power available to customers before Nov. 3., 2010 are not used to calculate rates. To the contrary, cost inflation factors are deliberately applied to the so-called "base rate" to bring it into line with the current costs also applied in the incremental increase of the rates that the City "layers" on top. In the rate design there is no disaggregation of the pre-Nov. 3, 2010 costs from the current costs. The City is charging rates that are normal for a contemporary across-the-board rate increase – *except* that it is including the illegal tax increment for transfer to the general fund. The notion of a pre-Prop 26 rate component is a sham.

3. The proposed rates even try to make future customers pay for alleged under-collections of rates from past pre-Prop 26 customers! The new rates would include charges for "Legacy ECAF Under-Collection" going back to 2006, at $129M, and charges for "Legacy RCA Under-Collection" for an indeterminate period, of at least $89M, for a total of about $218M. Simply put, you are asking new customers to pay for what you failed or neglected to collect from old customers. This by itself puts to rest the myth that pre-Prop 26 rates are preserved inviolate, when the new rates would explicitly try to make up for under-collections of rate revenues before Prop 26.

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4. The proposed rates attempt to make present and future customers pay for LADWP's unfunded pension liabilities for services delivered in the past to past power customers. The rate design documents have clearly designated DWP Unfunded Pension Liabilities that are estimated to be $2.1 billion, to be paid for by present and future power customers for services (they don't receive) delivered in the past by DWP employees whose pensions were not fully funded for those services in the past. The rate design documents deliberately obfuscate the City's intention to use increased power rates to pay for past unfunded DWP pension liabilities by referencing the obligation only as a placeholder, and then tying the payment amount to a figure developed through DWP's outside actuarial pension liability consultant. Nonetheless, the report prepared by the consultant (Segal Consulting) identifies the amortization of unfunded actuarial accrued liability at an amount of approximately $280 million per year to amortize the entire DWP unfunded pension liability over a course of 7-8 years. This sort of backpayment for liabilities associated with services delivered in the past, much like the "Legacy" cost factors identified above, are prohibited by Proposition 26. Specifically, the City is only permitted to charge power rates to electricity customers "for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product" (California Constitution, Article XIII c, §1(e)(2)).

The City of Los Angeles has a general obligation to its past employees to pay for what are currently unfunded pension liabilities for services rendered to the public in many years past. Current ratepayers cannot be saddled with this obligation, amounting to $280 million per year, when this portion of the rates is added to the "Legacy" factors for also failing to collect sufficient funds for services rendered in the past (about $220 million per year – see above), the ratepayers in Los Angeles are being asked to pay electric rates falsely and illegally inflated in the amount of roughly $500 million per year and receive nothing for it. These excessive charges are in addition to the falsely inflated portion of the rates collected to cover the 8% transfer from DWP to the City general fund of about $260 million per year and increasing. Proposition 26 was approved by the voters for the very purpose of putting an end to the continuing abuses of charges for City services that are nothing but a "cash cow" for the City general fund.

5. The proposed restructuring of rates from per-usage rates to a combination of fixed charges for system access plus commodity charges for usage, is antithetical to the concept of a preserved pre-Prop. 26 rate component that can be exploited for tax transfers. The proposed rate restructuring to include a mandatory fixed charge to pay for the system infrastructure together with a commodity charge to pay for actual consumption of electricity, follows the trend prevalent in California for water and power utilities that need a reliable stream of revenue to pay for capital infrastructure costs/maintenance but have faced declining commodity revenues from necessary conservation of water and power resources. However, this structural change makes it impossible to pretend that pre-Prop 26 rates are preserved; the two structures cannot coexist in one final rate. Before Prop 26, a customer that maintained an electric utility account for a property but was not using electricity (like a vacant house, or a shuttered commercial building) paid only a negligible accounting charge. The new rate

structure, however, forces payment of the fixed charge regardless of power usage. Further, the single rate structure blends in capital costs, while the bifurcated rate structure shifts capital infrastructure costs to the fixed charge and then adds charges for costs from consumption of power as that occurs; the two structures can't be "mixed" because the blended infrastructure costs in the old rates result in overpayment, a problem that can't be avoided without incredibly complex disaggregation and offsets of costs that wasn't done here. The two structures are mutually incompatible. Thus, it is impossible for the City to claim that it is proposing new rates that encapsulate the pre-Prop 26 rates as a continuing source of illegal tax transfers to the general fund.

The electric ratepayers of Los Angeles have been exploited for far too long with excessive rates that pay for the expenses of general government in Los Angeles instead of simply buying electricity. The mandate of Prop 26 is clear and simple: collect what it costs to produce and deliver the electricity and *no more*.

Thank you for your attention to these comments. We request that this letter be made a part of the record with respect to consideration of this matter by the Energy and Environment Committee and the City Council.

Respectfully,

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