



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal AP-2020-032

Nanoleaf Canada Limited

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, January 18, 2022*

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IN THE MATTER OF an appeal heard on September 28, 2021, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated January 5, 2021, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

NANOLEAF CANADA LIMITED

Appellant

AND

**THE PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

DECISION

The appeal is dismissed.

Randolph W. Heggart

Randolph W. Heggart

Presiding Member

Place of Hearing: Via videoconference
Date of Hearing: September 28, 2021
Tribunal Panel: Randolph W. Heggart, Presiding Member
Tribunal Secretariat Staff: Emilie Audy, Counsel
Nadja Momcilovic, Counsel

PARTICIPANTS:

Appellant	Counsel/Representative
Nanoleaf Canada Limited	Jean-Marc Clément
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Amani Delbani

WITNESS:

Gimmy Chu
Chief Executive Officer and Co-founder
Nanoleaf Canada Limited

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STATEMENT OF REASONS

BACKGROUND

[1] This is an appeal filed by Nanoleaf Canada Inc. (Nanoleaf) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made by the President of the Canada Border Services Agency (CBSA) on January 5, 2021, pursuant to subsection 60(4) of the Act.

[2] The issue under appeal is whether the goods in issue are classified under tariff item No. 9405.40.90 of the schedule to the *Customs Tariff*² as “[o]ther electric lamps and lighting fittings”, as determined by the CBSA, or should be classified under tariff item No. 8539.50.00 as “[e]lectric filament or discharge lamps, including sealed beam lamp units and ultra-violet or infra-red lamps; arc-lamps, light-emitting diode (LED) lamps”, as submitted by Nanoleaf. The dispute is therefore at the heading level.

[3] For the reasons that follow, the Tribunal finds that the goods in issue are “[o]ther electric lamps and lighting fittings” of tariff item No. 9405.40.90.

PROCEDURAL HISTORY

[4] Between January 2017 and September 2019, Nanoleaf imported various models of Aurora LED light panels under 62 transactions that are the goods subject to this appeal. They were accounted for under tariff item No. 8531.20.00.

[5] On October 18, 2019, the CBSA re-determined the tariff classification of the goods and classified them under tariff item No. 9405.40.90.

[6] On January 14, 2020, Nanoleaf submitted a request to review the re-determination pursuant to subsection 60(1) of the Act. Nanoleaf requested that the goods be classified under tariff item No. 8539.50.00.

[7] On January 5, 2021, the CBSA issued its decision maintaining that the goods in issue were classified under tariff item No. 9405.40.90.

[8] On March 31, 2021, Nanoleaf filed this appeal with the Tribunal pursuant to subsection 67(1) of the Act.

[9] On September 28, 2021, the Tribunal held a public hearing via videoconference.

DESCRIPTION OF THE GOODS IN ISSUE

[10] The appeal concerns the Nanoleaf LED light panels. Both parties agree that the goods in issue have LEDs, which provide light.

[11] The goods are imported and sold in pre-packaged boxes containing a number of components for assembly, notably: (a) light panels which contain the light-emitting diodes; (b) mounting plates, which serve as the base for the light panels to be secured in place; (c) linkers, which connect the light

¹ R.S.C., 1985, c. 1 (2nd Supp.) [Act].

² S.C. 1997, c. 36.

panels; (d) a controller, which turns the light on and off and also provides other lighting control functionality; (e) mounting tape, which serves to secure the light panels on a wall; and (f) a power supply, which converts voltage and provides electricity.³

LEGAL FRAMEWORK

[12] The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).⁴ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

[13] Subsection 10(1) of the *Customs Tariff* provides that, subject to subsection 10(2), the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁵ and the Canadian Rules⁶ set out in the schedule.

[14] The General Rules comprise six rules. Classification begins with Rule 1, which provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the other rules.

[15] Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁷ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*.⁸ Accepting that it must interpret the law as it stands on the date of importation, the Tribunal must not ignore relevant classification opinions issued after the date of importation.⁹ While the Classification Opinions and the Explanatory Notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.¹⁰

[16] The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the General Rules as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. As the Supreme Court of Canada indicated in *Igloo Vikski*, it is “only

³ Exhibit AP-2020-032-03 at para. 13.

⁴ Canada is a signatory to the International Convention on the Harmonized Commodity Description and Coding System, which governs the Harmonized System.

⁵ S.C. 1997, c. 36, schedule [General Rules].

⁶ S.C. 1997, c. 36, schedule [Canadian Rules].

⁷ WCO, 4th ed., Brussels, 2017 [Classification Opinions].

⁸ WCO, 6th ed., Brussels, 2017 [Explanatory Notes].

⁹ *Yamaha Motor Canada Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (6 December 2000), AP-99-105 (CITT). See also *Reha Entreprises Ltd. and Cosmetic Import Co. Limited v. Deputy Minister of National Revenue* (28 October 1999), AP-98-053 and 054 (CITT); *C.L. Blue Systems Ltd. v. Deputy Minister of National Revenue* (24 November 1999), AP-97-074 (CITT).

¹⁰ See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that explanatory notes be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to classification opinions.

where Rule 1 does not conclusively determine the classification of the goods that the other General Rules become relevant to the classification process”.¹¹

[17] Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to use a similar approach to determine the proper subheading.¹² Finally, the Tribunal must determine the proper tariff item classification.¹³

RELEVANT CLASSIFICATION PROVISIONS

Heading 85.39

[18] Nanoleaf submits that the proper classification of the goods in issue is under tariff item No. 8539.50.00. The relevant provisions read as follows:

Section XVI

**MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT;
PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION
IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND
ACCESSORIES OF SUCH ARTICLES**

Chapter 85

**ELECTRICAL MACHINERY AND EQUIPMENT AND PARTS THEREOF; SOUND
RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND
RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH
ARTICLES**

...

85.39 **Electric filament or discharge lamps, including sealed beam lamp units and ultra-violet or infra-red lamps; arc-lamps, light-emitting diode (LED) lamps.**

...

8539.50.00 **-Light-emitting diode (LED) lamps**

¹¹ *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) at para. 21.

¹² Rule 6 of the General Rules provides that “. . . the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules” (i.e. Rules 1 through 5) and that “. . . the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

¹³ Rule 1 of the Canadian Rules provides that “. . . the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [General Rules] . . .” and that “. . . the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires.” Classification opinions and explanatory notes do not apply to classification at the tariff item level.

[19] Note 4 to Section XVI provides as follows:

Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

[20] The explanatory notes to Chapter 85 provide as follows:

This Chapter covers . . . (6) Certain electrical goods not generally used independently, but designed to play a particular role as components, in electrical equipment, e.g., capacitors (heading 85.32), switches, fuses, junction boxes, etc. (heading 85.35 or 85.36), lamps (heading 85.39), thermionic, etc., valves and tubes (heading 85.40), diodes, transistors and similar semiconductor devices (heading 85.41), electrical carbons (heading 85.45).

[21] The explanatory notes to heading 85.39 provide as follows:

The heading covers filament lamps, gas or vapour discharge lamps, arc-lamps and light-emitting diode (LED) lamps.

. . .

(F) LIGHT-EMITTING DIODE (LED) LAMPS

The light from these lamps is produced by one or more light-emitting diodes (LED). These lamps consist of a glass or plastic envelope, one or more light-emitting diodes (LED), circuitry to rectify AC power and to convert voltage to a level useable by the LEDs, and a base (e.g., screw, bayonet or bi-pin type) for fixing in the lamp-holder. Certain lamps may also contain a heat sink.

These lamps are of various shapes, e.g., spherical (with or without a neck); pear or onion shaped; flame shaped; tubular (straight or curved); special fancy shapes for illuminations, decorations, Christmas trees, etc.

Heading 94.05

[22] The CBSA submits that the goods in issue should be classified under tariff item No. 9405.40.90. The relevant provisions read as follows:

Section XX

MISCELLANEOUS MANUFACTURED ARTICLES

Chapter 94

FURNITURE; BEDDING, MATTRESSES, MATTRESS SUPPORTS, CUSHIONS AND SIMILAR STUFFED FURNISHINGS; LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED; ILLUMINATED SIGNS, ILLUMINATED NAME-PLATES AND THE LIKE; PREFABRICATED BUILDINGS

...

94.05 **Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included.**

...

9405.40 **-Other electric lamps and lighting fittings**

...

9405.40.90 **- - -Other**

[23] Note 1(f) to Chapter 94 provides as follows:

1. This Chapter does not cover . . . (f) Lamps or lighting fittings of Chapter 85.

[24] The general considerations of the explanatory notes to chapter 94 provide as follows:

This Chapter covers, **subject** to the exclusions listed in the Explanatory Notes to this Chapter:

...

(3) Lamps and lighting fittings and parts thereof, not elsewhere specified or included, of any material (**excluding** those of material described in Note 1 to Chapter 71), and illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included (heading 94.05).

[25] The relevant explanatory notes to heading 94.05 provide as follows:

(I) LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED

Lamps and lighting fittings of this group can be constituted of any material (**excluding** those materials described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc.). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders, switches, flex and plugs, transformers, etc., or, as in the case of fluorescent strip fixtures, a starter or ballast.

This heading covers in particular:

(1) . . . **Lamps and lightning fittings normally used for the illumination of rooms**, e.g. : hanging lamps; bowl lamps; ceiling lamps; chandeliers; wall lamps; standard lamps; table lamps; bedside lamps; desk lamps; night lamps; water-tight lamps.

...

(3) **Specialised lamps**, e.g. : darkroom lamps; machine lamps (presented separately); photographic studio lamps; inspection lamps (**other than** those of **heading 85.12**); non-flashing beacons for aerodromes; shop window lamps; electric garlands (including those fitted with fancy lamps for carnival or entertainment purposes or for decorating Christmas trees).

...

PARTS

...

This heading also **excludes** :

...

(h) Electric filament lamps, discharge lamps (including sealed beam lamp units and ultra-violet or infrared lamps as well as tubes in various complex forms such as scrolls, letter, figures, stars, etc.), arc-lamps and light emitting diode (LED) lamps (**heading 85.39**).

POSITION OF PARTIES

[26] The dispute is at the tariff heading level.

[27] Nanoleaf argues that the goods in issue should be classified in heading 85.39, as they are lamps of an LED type. According to Nanoleaf, the terms of heading 85.39 specifically name “light-emitting diode (LED) lamps” since the introduction of the Harmonized System.¹⁴ As such, Nanoleaf argues that, because LED lamps are named in heading 85.39, the goods in issue are therefore excluded from classification in heading 94.05.

[28] The CBSA submitted that the goods in issue should be classified in heading 94.05 as lamps and lighting fittings not elsewhere specified or included, and specifically under tariff item No. 9405.40.90 as other electric lamps and lighting fittings.

[29] The CBSA further submitted that the goods are excluded from classification in heading 85.39, as they meet the four conditions for classification in heading 94.05 set out by the Tribunal. Indeed, they: (1) are lamps or lighting fittings; (2) are of any material; (3) use any source of light; and (4) are not elsewhere specified or included.¹⁵ According to the CBSA, heading 85.39 covers light bulbs and their equivalent LED lamps, whereas heading 94.05 does not.¹⁶ As such, the CBSA submitted that the goods in issue are properly classified under heading 94.05 because the goods are lamps.

TRIBUNAL’S ANALYSIS

[30] The Tribunal must determine whether it should begin by examining Chapter 94 or Chapter 85. The Tribunal has previously held that, when there is a single relevant exclusionary note

¹⁴ Exhibit AP-2020-032-03 at para. 49.

¹⁵ Exhibit AP-2020-032-08 at para. 50.

¹⁶ *Ibid.* at para. 44.

that precludes the *prima facie* classification of goods in both headings in issue in an appeal, the Tribunal should begin its analysis with the excluded heading.

[31] Note 1(f) states that Chapter 94 does not cover “[l]amps or lighting fittings of Chapter 85”. It follows that the relevant provisions of Chapter 85 must be examined first. If the goods are classifiable in Chapter 85, the classification analysis ends.¹⁷

[32] The Tribunal will therefore start its analysis with the heading that is specifically excluded, in this case, heading 85.39, as note 1(f) to Chapter 94 provides that Chapter 94 does not cover lamps or lighting fittings of Chapter 85.

Chapter 85 does not cover the goods in issue

[33] The Tribunal finds that Chapter 85 does not cover the goods in issue and that the goods are not classifiable in heading 85.39. Chapter 85 covers certain components of electric lamps but not lamps or lighting fittings. The tariff nomenclature in Chapter 85, when taken as a whole, supports this interpretation.

[34] The Tribunal’s decisions in *Rona Inc.*¹⁸ (decorative LED luminaires) and *Liteline* (LED puck lights and LED starter kits) occurred prior to the addition of the words “light-emitting diode (LED) lamps” to heading 85.39 and tariff item No. 8939.50.00.

[35] Nanoleaf submits that the goods in issue are classified in heading 85.39, as they are lamps of a LED type. The Tribunal does not agree that the addition of the words “light-emitting diode (LED) lamps” changes the fundamental nature of what is covered by Chapter 85.

[36] In *Liteline*, the Tribunal stated the following:

Most important in the above list is heading No. 85.39 “**Electric filament or discharge lamps, including sealed beam lamp units and ultra-violet or infra-red lamps; arc-lamps.**” These “lamps” are only parts of a whole; in essence, their only function is as “bulbs” for lighting units, whether they be freestanding lamps or lighting fittings (lamps which are attached to structures). This explains why LED bulbs are also classified in Chapter 85.¹⁹

[Footnote omitted]

[37] The Tribunal is of the opinion that the addition of the words “light-emitting diode (LED) lamps” in the Harmonized System only serves to reinforce the Tribunal’s conclusion in *Liteline* and does not change the fundamental meaning of Chapter 85.

[38] The CBSA submits that heading 85.39 covers light bulbs and its equivalent LED lamps, whereas heading 94.05 does not cover light bulbs but light fixtures as well as desk, table and floor lamps. Specifically, the CBSA submits that the English and the French versions of the explanatory notes to Chapter 94 and the explanatory notes to heading 94.05 differ, as they use the words “lamps

¹⁷ *Liteline Corporation v. President of the Canada Border Services Agency* (1 February 2016), AP-2014-029 (CITT) [*Liteline*] at paras. 27–28.

¹⁸ *Rona Inc. v. President of the Canada Border Services Agency* (11 September 2017), AP-2016-031 (CITT) [*Rona Inc.*].

¹⁹ *Liteline* at para. 38.

and lighting fittings” and “*les appareils d’éclairage*”. The CBSA argues that when the words of a statute appear to differ, the interpretation must follow the shared meaning rule.²⁰ The Tribunal agrees.²¹

[39] In *Liteline*, the Tribunal, referring to relevant classification opinions, stated the following:

These classification opinions support the Tribunal’s view that heading No. 85.43 is appropriate for the classification of certain lamp components, be they based on LED technology or otherwise. The goods described in the classification opinions are components of lamps and lighting fittings, i.e. they are light bulbs. However, the goods in issue are the lamps themselves and, as such, are not described by the classification opinions. *The classification opinions deal with LED bulbs (classified in heading No. 85.43, just as filament bulbs would be classified in heading No. 85.39) and do not deal with complete fixtures and lamps such as the goods in issue which belong specifically in heading No. 94.05.*²²

[Emphasis added]

[40] The explanatory notes to the chapters and headings also support the conclusion that heading 85.39 pertains to bulbs or components and not lamp fixtures.

[41] The explanatory notes to Chapter 85 state that “[t]his Chapter covers: . . . (6) Certain electrical goods not generally used independently, but designed to play a particular role as components, in electrical equipment . . .”.

[42] Furthermore, section (F) of the explanatory notes to heading 85.39 states that “[t]he light from these lamps is produced by one or more light-emitting diodes (LED). These lamps consist of a glass or plastic envelope, one or more light-emitting diodes (LED), circuitry to rectify AC power and to covert voltage to a level useable by the LEDs, and a base (e.g., screw, bayonet or bi-pin type) for fixing in the lamp-holder. Certain lamps may also contain a heat sink. These lamps are of various shapes, e.g., spherical (with or without a neck); pear or onion shaped; flame shaped; tubular (straight or curved); special fancy shapes for illuminations, decorations, Christmas trees, etc.” This is clearly describing some type of component light bulb.

[43] As for the explanatory notes to heading 94.05, they mention that this heading covers in particular:

(1) **Lamps and lightning fittings normally used for the illumination of rooms**,
e.g. : hanging lamps; bowl lamps; ceiling lamps; chandeliers; wall lamps; standard lamps;
table lamps; bedside lamps; desk lamps; night lamps; water-tight lamps.

. . .

(3) **Specialised lamps** . . .

²⁰ Exhibit AP-2020-032-08 at paras. 36–40.

²¹ As described in *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 SCR 23 at para. 203.

²² *Liteline* at para. 40. See also *Rona Inc.* at para. 40.

[44] In *Liteline* and *Rona Inc.*, the Tribunal determined that the lamps and lighting fittings of Chapter 85 covered certain goods which are components, whereas complete products were classified under Chapter 94.²³

[45] In *Bri-Chem*, the Federal Court of Appeal reiterated that “while it is true that later tribunal panels are not bound by the decisions of earlier tribunal panels, it is equally true that later panels should not depart from the decisions of earlier panels unless there is good reason.”²⁴

[46] Having considered the parties’ submissions, the Tribunal is not persuaded that it should depart from the analysis of the tariff classification provisions it followed in *Liteline* and *Rona Inc.*

Heading 94.05 is applicable to the goods in issue

[47] In *Costco*, the Tribunal found that the lights in issue had been classified in heading 94.05, as the four criteria for classifying a good in that heading had been met.²⁵

[48] The criteria for classifying a good in heading 94.05 are the following:

- (1) the goods must be lamps or lighting fittings;
- (2) they can be of any material;
- (3) they can use any source of light; and
- (4) they must not be elsewhere specified or included.²⁶

[49] The Tribunal will apply those criteria in this case:

- (1) Lamps or lighting fittings:

The goods in issue are LED panels that contain light panels, a controller, an AC cable, a power supply, linkers and a rhythm module. Both parties agree that the goods are lamps, as they provide light. According to the documentary evidence, the Nanoleaf panels display “16M+ colors with 1200K-6500K white light temperature range and brightness control”²⁷ and provide an “*Eclairage d’ambiance ou fonctionnel*”.²⁸

- (2) Be of any material:

The goods in issue are made of plastic material.²⁹

- (3) Use any source of light:

²³ *Liteline* at para. 40; *Rona Inc.* at para. 38.

²⁴ *Canada (Attorney General) v. Bri-Chem Supply Ltd.*, 2016 FCA 257 (CanLII), [2017] 3 FCR 123 [*Bri-Chem*] at para. 44.

²⁵ *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (29 July 2013), AP-2012-041 and AP-2012-042 (CITT) [*Costco*] at para. 49.

²⁶ See *Rona Inc.* at para. 66; *LRI Lighting International Inc. v. President of the Canada Border Services Agency* (23 May 2017), AP-2016-007 (CITT) at para. 36.

²⁷ Exhibit AP-2020-032-03 at 22.

²⁸ *Ibid.*

²⁹ Exhibit AP-2020-032-08 at para. 56; *Transcript of Public Hearing* at 11.

The goods in issue consist of light panels that contain the LEDs that provide light and a power supply which converts voltage and provides electricity.³⁰

(4) Not be elsewhere specified or included:

This appears to be the key element—the Tribunal concludes that the goods are not specifically named or described in a heading of Chapter 85, more specifically heading 85.39.

[50] In light of the above, the Tribunal concludes that the goods in issue are properly classified in heading 94.05, as they meet the criteria set out in *Costco*.

[51] The Tribunal further concludes that lamps of heading 85.39 are only parts of a whole, including the LED lamps, and that the goods in issue should be classified in heading 94.05.

[52] The Tribunal also concludes that this decision is consistent with the Classification Opinions, which classify “lamps in form on a light-emitting diode (LED) downlight” in subheading 9405.40 and LED “bulb lamp” in subheading 8539.50. While the goods in issue are not exactly the same, their composition, material and use are similar enough that weight can be given to the classification process and determination of the WCO. The differentiation of the goods in headings 85.39 and 94.05 made by the WCO is in line with the Tribunal’s decision.

CONCLUSION

[53] On the basis of the above reasons, the goods in issue are properly classified under tariff item No. 9405.40.90.

DECISION

[54] The appeal is dismissed.

Randolph W. Heggart

Randolph W. Heggart
Presiding Member

³⁰ Exhibit AP-2020-032-03 at para. 13.