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16-RPS-01 2016-07-25 LADWP's Comments on Staff Draft RPS Eligibility Guidebook

Additional submitted attachment is included below.

**BEFORE THE ENERGY COMMISSION
OF THE STATE OF CALIFORNIA**

In the matter of:)	Docket No. 16-RPS-01
)	
Developing Guidelines for the 50 Percent Renewables Portfolio Standard (RPS))	RE: Guideline Revisions for RPS Implementation
_____)	

**COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER (LADWP) TO THE
CALIFORNIA ENERGY COMMISSION (CEC) NOTICE REQUESTING PUBLIC COMMENTS ON STAFF
DRAFT RENEWABLES PORTFOLIO STANDARD (RPS) ELIGIBILITY GUIDEBOOK, NINTH EDITION**

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Dated: July 25, 2016

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OF THE STATE OF CALIFORNIA**

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INTRODUCTION

The City of Los Angeles (City of LA) is a municipal corporation and charter city organized under the provisions set forth in the California Constitution. LADWP is a proprietary department of the City of LA, pursuant to the Los Angeles City Charter, whose governing structure includes a mayor, a fifteen-member City Council, and a five-member Board of Water and Power Commissioners (Board). LADWP is the third largest electric utility in the state, one of five California Balancing Authorities, and the nation’s largest municipal utility, serving a population of over four million people. LADWP is a vertically integrated utility, both owning and operating the majority of its generation, transmission and distribution systems. LADWP has annual sales exceeding 23 million megawatt-hours (MWhs) and has a service territory that covers 465 square miles in the City of LA and most of the Owens Valley. The transmission system serving the territory totals more than 3,600 miles and transports power from the Pacific Northwest, Utah, Wyoming, Arizona, Nevada, and California to Los Angeles. LADWP appreciates the opportunity to comment on the California Energy Commission (CEC) Staff Draft Renewables Portfolio Standard (RPS) Eligibility Guidebook, Ninth Edition. Please note that all page references in this document correspond to the marked-up version of the Draft RPS Eligibility Guidebook.

GENERAL COMMENTS ON THE CEC DRAFT RPS ELIGIBILITY GUIDEBOOK

LADWP appreciates the opportunity to participate in the public process for commenting on the next revision of the CEC RPS eligibility guidebook. LADWP also appreciates CEC's efforts to continuously improve the clarity and completeness of the guidebook. However, it is difficult for interested stakeholders to participate in the process with meaningful feedback when commenting deadlines are set so aggressively. The CEC Staff draft RPS guidebook was initially released on Monday, July 11, 2016. The commenting deadline was Monday, July 25, 2016. This only allocated less than ten business days for stakeholders to review over 100 pages of regulation and coordinate meaningful comments for submission to new legislative goals of achieving 50% renewables over the next 14 years (by 2030).

Utilities use this guidebook to make significant financial decisions. To ensure meaningful dialog and input from stakeholders, LADWP respectfully requests that the CEC provide longer review and commenting periods for draft eligibility guidebooks. Additionally, LADWP requests that the draft guidebook go through multiple commenting periods before adoption. Interaction among stakeholders and CEC staff is instrumental in continuing the success of California's RPS program.

Similarly, LADWP respectfully requests that the CEC delay full implementation of the RPS online reporting system. The reporting mechanism to verify RPS compliance is just as important as the eligibility guidebook. Adequate time should be given for stakeholder collaboration with CEC staff before such a significant change is made. LADWP supports CEC efforts in improving the certification and verification process through an RPS online system. However, the transition to a new online system should not be so sudden. To date, CEC has only conducted one stakeholder workshop on February 23, 2016 to introduce utilities to a preliminary version of the RPS online system. During this workshop, there were many unavailable features because the system was still not fully developed. A second stakeholder workshop is scheduled for July 26, 2016. CEC plans to require utilities to begin using this system starting October 1, 2016 for RPS certification applications. LADWP requests that CEC

allow for a transition period in which stakeholders have the option to submit RPS applications and reports via email or the online system. This will give CEC staff the opportunity to conduct more instructional workshops and discuss concerns with stakeholders before the online system is mandatory. If CEC continues with its October 1, 2016 implementation schedule, LADWP fears that stakeholders will encounter issues similar to the issues that were experienced during the hurried transition from the ITS to WREGIS, which resulted in numerous RECs not being properly accounted for and issues with verification. LADWP requests that the CEC delay or at least consider granting a transitional period for the RPS online system implementation in order to ensure appropriate time for stakeholder input and training.

LADWP is committed to achieving California's goal of 50% renewable energy by 2030. In order to achieve this goal, CEC must continue to evolve the guidebook to incorporate new renewable technologies and ensure that all California utilities have the ability to achieve 50% in a manner that best fits that utility with the resources available. Additionally, RPS resource diversity is important for utilities to maintain overall electric reliability. Resource diversity is vital to helping utilities keep the lights on. Therefore, the CEC should expand the resource eligibility, instead of narrowing it, to assist California utilities in maintaining resource diversity and grid reliability. The CEC should reconsider allowing the eligibility of renewable resources that are currently ineligible, such as energy storage, out-of-state biomethane, large hydroelectric facilities, small hydroelectric generation, including small hydro from British Columbia, pumped storage, new small hydroelectric facilities, conduit hydroelectric facilities, and hydroelectric generating units operated as part of a water supply or conveyance system.

Below are specific comments from LADWP on the CEC draft RPS eligibility guidebook, ninth edition.

SPECIFIC COMMENTS ON THE CEC DRAFT RPS ELIGIBILITY GUIDEBOOK

2.C. Biomethane (Energy Resource Eligibility Requirements)

In section 2.C.2.a(2) regarding "Adjustments to Existing Biomethane Procurement Contracts", the draft guidebook lists several types of contract adjustments that would cause

additional biomethane procurement received from an existing procurement contract to be subjected to the new biomethane contract requirements. Some of these contract adjustments include: (b) increasing quantities of existing biomethane sources, (c) adding quantities of biomethane specified as optional to the buyer in an existing biomethane procurement contract, (d) adding new biomethane sources, and (e) receiving biomethane from a new source that was not producing biomethane on or before April 1, 2014 (p.17). If these adjustments are accommodated in the existing contract without modifications or amendments, the additional biomethane procured should not be subject to new contract requirements. The CEC should remove items (b), (c), (d), and (e). Additional biomethane procurement would be subjected to the new contract requirements if the existing contract language is actually modified or amended. The parties in the existing contracts have binding obligations to meet the contract terms and conditions, and facilities utilizing existing contracts with these adjustments should not be subject to new requirements with retroactive application. The guidebook will likely be effective either just before or soon after the close of Compliance Period 2. Impacts to eligibility and verification after the close of a compliance period will wreak havoc on a utility's ability to adequately count its generation and RECs with verification for years to come.

In section 2.C.3.b. entitled "Claiming GHG Reductions From Methane Reduction", the draft guidebook states:

"A POU or intermediary party, including the electrical generator, to a biomethane procurement contract shall not make a marketing, regulatory, or retail claim that asserts that the biomethane procurement contract resulted, or will result, in GHG reductions related to the destruction of methane if the capture and destruction of methane are required by law. If the biomethane source is required by law to capture and destroy the methane produced by the biomethane source, the applicant for the designated generation facility must convey this information to the Energy Commission as part of the application for RPS certification." (Draft Guidebook, p.12)

The language underlined above may conflict with the exemption from compliance obligations for biomethane under Section 95852.2 of the California Air Resources Board (CARB) *Regulation for the California Cap On Greenhouse Gas Emissions and Market-Based Compliance*

Mechanisms to Allow for the Use of Compliance Instruments Issues by Linked Jurisdictions.

Under the CARB's Cap & Trade regulation, emissions from combustion of biomass-derived fuels, including biomethane, are not subject to the Cap & Trade program compliance obligation if they meet the eligibility and verification requirements in CARB's Cap & Trade and mandatory reporting rules.

Use of biomethane instead of natural gas results in a reduction in GHG emissions because the biomethane (biomass-derived fuel) is displacing natural gas (fossil fuel) that would otherwise have been burned to produce electricity. Good public policy should encourage the beneficial use of biomethane, not discourage it.

Moreover, 2.C. for biomethane should only apply prospectively, not retroactively. The Legislature emphasized this important point by enacting the language "under the rules in place at the time the contract was executed, including the Fourth Edition of the Energy Commission's Renewables Portfolio Standard Eligibility Guidebook," Public Utility Code Section 399.12.6(a)(1). (emphasis added). Otherwise, it would interfere with existing contracts and impose additional constraints that did not exist at the time the contracts were negotiated and entered into by the parties.

2.F. Hydroelectric (Energy Resource Eligibility Requirements)

In section 2.F.3 for Hydroelectric Generation Units Operated as part of a Water Supply or Conveyance System, the draft guidebook states that "Applications are no longer accepted beginning January 1, 2013." This could create confusion for new applications. The CEC needs to clarify application procedures for new units installed after January 1, 2013. FERC exempted conduit small hydroelectric facilities that are 5MW or less from the regular licensing process. It is beneficial for California to promote small hydroelectric generation along the water distribution systems and it is in line with the goals that FERC is trying to achieve. CEC should align with FERC and use the guidebook regulations to help encourage the construction of new renewable small hydroelectric generating units. Also, as discussed above, CEC should help expand the diversity of eligible renewable resources, not restrict them.

The additions to the definition of “project” references small hydroelectric facilities as well as hydroelectric generating units. This causes confusion. The definition of a small hydroelectric facility is different from the definition of a hydroelectric generating unit. These two terms are also partially defined within the guidebook. The CEC should consider adding “hydroelectric generating unit” to the glossary of terms and ensure that the glossary definitions of “small hydroelectric facility” and “hydroelectric generating unit” as well as all other references to these terms within the guidebook are consistent with the definitions contained in PUC code 399.12.

2.J. Solar

The guidebook gives a general statement on solar eligibility which can be open to interpretation. In order to avoid issues with verification of eligible facilities, additional clarification should be included to address the interaction between facilities that contain solar generation and energy storage.

3.A.1.a(1). Creation of Retroactive Renewable Energy Credits in WREGIS (Facility Requirements)

For the creation or retroactive RECs the audit report deadline should be extended to 120 days after the entity receives confirmation from the Executive Director that the request has been approved. Third-party audits can be a slow and costly process. Therefore, it is important to provide entities with adequate time to arrange for the resources and finances to satisfy this requirement.

Page 26 of the draft guidebook contains a list of the numerous requirements that must be fulfilled during a third-party audit for the creation of retroactive RECs. WREGIS was developed to ensure that an eligible renewable energy resource is counted only once for the purpose of meeting the RPS. WREGIS is a system in which renewable energy credits can only be generated once and retired once. Therefore, if WREGIS is the sole tracking system for renewable energy credit generation and retirement, additional audit investigations and reports

are not necessary. The CEC should consider elimination of the audit report requirement when granting retroactive REC requests.

The CEC should also add a process to allow for the creation of retroactive RECs due to a delay in the CEC staff's ability to certify resources timely. This becomes an issue especially when the certification is delayed beyond a compliance period. Utilities are not provided with a process to apply RECs retroactively once it has received certification and the compliance period has ended. Therefore, the creation of retroactive RECs should be allowed for resources that applied for certification, but due to the delay in time it took for the CEC staff to review and respond to the application, the certification was not received until after the end of a compliance period.

Commensurately with this same concept:

- The CEC should provide for a process to revise its compliance reports to include the RECs retroactively created; and
- The CEC should create a procedure to retire and unretire RECs after the end of a compliance period to include retroactive RECs. These additional processes would allow a utility to adequately and fairly account for its RECs from all renewable energy resources.

3.B.1.c Alternative Measurement Methods

On p.31, the draft guidebook states, “Applicants may submit an alternative measurement method if it can be demonstrated to the Energy Commission’s satisfaction that the method is superior to the methods discussed above and is the most appropriate method for the specific facility. The method shall be based on the total annual energy input of each energy resource to the generating system, and any inputs not separately metered. The Energy Commission will evaluate and consider the proposed measurement method as part of the facility application.” Given the CEC’s willingness to consider alternative methods, these statements should consider the following suggestions to ensure flexibility: (1) For multi-fuel facilities, the CEC should consider allowing REC calculations on a per unit basis instead of a per facility basis, and (2) calculations should be allowed to be performed on a monthly basis or an

annual basis. In addition, there should be added flexibility to allow alternative methodologies to be submitted at any point in time during the certification or verification process.

3.A.2 METERING REQUIREMENTS

On p.28, the draft guidebook states, “Generation from an RPS-certified facility shall be measured using a meter or meters with an independently verified accuracy rating of ± 2 percent or better to be counted for the RPS.” The term “independently verified,” needs further clarification.

3.E. Incremental Generation (Facility Requirements)

Section 3.E.3(a) on p.41 identifies generator output as the only characteristic to determine improved facility or unit efficiency. The CEC should consider modifying this language to include generator pumping efficiency improvements. If hydroelectric generators demonstrate efficiency in generation mode as well as pumping mode, both types of efficiencies should be RPS eligible. This would be consistent with section 2.F.4.b. on p.17 that identifies the RPS eligibility criteria for incremental hydroelectric facilities or generating units as “improvements that make more efficient use of the existing water resource and improve the efficiency of equipment”.

The CEC should also consider removing section 3.E.3.b. which requires the proposed pro rata approach to be “approved by FERC under the FERC Renewable Energy Production Tax Credit, pursuant to the Energy Policy Act (2005).” (p.41) This requirement limits the applicability of the pro rata approach for hydroelectric facilities and generating units as well as prevents entities from using this approach if they are not eligible for the FERC tax credit.

The CEC should consider removing the words “superior” and “most” in section 3.E.3.c. on p.31. It is an acceptable requirement to prove that an alternative measurement method is a more appropriate test for a given facility or generating unit compared to the other methods already mentioned in this section. However, using the terms “superior” and “most” allow for too much subjectivity in the analysis of the alternative method.

The CEC should consider including additional information in section III.E.3. to specifically address how the REC will be calculated for hydroelectric facilities and generating units that are

approved for RPS eligibility via an alternative measurement method. In the other two methods, a historical baseline of performance is established and any performance above that baseline is identified as RPS eligible. A historical baseline method is not appropriate for all measurement methods. LADWP suggests that a percentage calculation be used to determine the amount of generation from the hydroelectric facility or generating unit that is eligible for REC creation. The RPS eligible percentage should be calculated from the analysis of before and after testing of the facility or generating unit over the entire load range in pumping mode and generating mode. Then the RPS eligible percentage should be multiplied by the total generation output of the facility or generating unit to calculate the amount of eligible megawatts for Renewable Energy Credits.

3.F. Energy Storage

On p.41, the guidebook should clarify if there is a difference between energy storage that is “integrated into the facility” and “directly connected to the facility”. If there is no difference, then “integrated into the facility” should be used for consistency. The draft guidebook also does not explain metering requirements necessary to determine eligibility. For example, can a bi-directional meter be used to monitor solar production as well as battery discharge?

P.32 of the draft guidebook also references the interaction between energy storage and renewable facilities. However, the short description of metering for a facility that includes energy storage is still very vague. LADWP requests that there is more clarification with the addition of formulas and possibly sample diagrams and calculations for clarity.

At the beginning of this section, the draft guidebook states that, “An energy storage device may be considered an addition or enhancement to a facility...” This statement seems to imply that the energy storage itself is RPS-eligible and can increase the REC production of an RPS facility. If this is a proper interpretation, LADWP fully supports the efforts of CEC to provide RPS credit for energy storage, which is a good way for CEC to expand the diversity of RPS-eligible resources available to California utilities.

6.B. Common Carrier Pipeline Biomethane (Annual Facility Reports)

On p.64 of the draft guidebook, there is an extensive list of reporting requirements that need to be met in order to maintain RPS eligibility for common carrier pipeline biomethane. Some of these requirements need more clarification while other requirements are impossible to fulfill.

Reporting requirement 4 identifies the requirement of “monthly meter data showing the total use of all biomethane and nonrenewable energy resources at the generating facility”. This requirement may not be feasible. Most generating facilities only have one meter to measure the amount of gas entering the generator on a monthly basis. However, this meter does not have the ability to differentiate between the total amount of biomethane used and the total amount of natural gas or other nonrenewable energy resources. Clarification is required to identify if one combined meter reading is sufficient or this requirement should be eliminated.

Reporting requirements 5 and 6 also need more clarification. Reporting requirement 5 requests documentation regarding “storage sites”. The definition of this term is not clear. Reporting Requirement 6 is vague and open to interpretation. It is not clear what “additional documentation” the CEC is requesting to satisfy this requirement. LADWP requests removal of these vague requirements.

8.B Records and Audits

The CEC should clarify that the audit provisions on p.80 of the draft guidebook do not apply to POUs. The *Enforcement Procedures for the Renewables Portfolio Standard for Publicly Owned Electrical Utilities* contain the exclusive procedure available relating the verification or auditing of data submitted by POUs. Public Utilities Code Section 399.25 requires the CEC to develop an accounting system for SBX 1-2.

While the audit provisions do not apply to POUs, it should also be noted that there is no guidance in this section regarding the timeliness of a CEC audit. The CEC should initiate and complete an audit within a certain time period. While the Record Retention section requires

records to be kept for “no fewer than 5 years,” (p. 81) there is no equivalent time period for the CEC to begin or complete an audit.

It would provide POUs much needed certainty to be able to plan for additional resources while knowing the existing resources have met the compliance targets as reported. Also, it would provide the CEC with needed certainty to be able to plan for and direct its limited human resources towards the cases that are most critical.

8.C. Energy Commission Appeals

The revised appeal language on p.82 limits the Executive Director’s discretion by listing the actions that the Executive Director can take in response to a petition for reconsideration. The revised language also limits a petitioner’s ability to appeal the Executive Director’s decision to the Energy Commission. Specifically, the new language states that “If the Executive Director denies the petition for a lack of merit, lack of jurisdiction, or insufficient evidence, the petitioner may appeal the denial to the Energy Commission...” Thus, if the Executive Director takes an action that does not fall within the three categories listed, such as a partial denial, the applicant or petitioner has no administrative recourse and is forced to litigate their rights in court. This is not a prudent use of judicial resources, especially when such issues could be resolved administratively.

Additionally, the revised appeal process no longer accommodates administrative appeals regarding revocation of RPS certification. If the RPS certification of a facility is revoked, the facility owner can appeal to the Executive Director for the certification to be reinstated. If the Executive Director agrees with the revocation of certification for the facility, there is no further process for the facility owner to follow in order to resolve this disagreement. The new appeal language no longer allows petitions to go to the Energy Commission for RPS certification revocation because it does not fall within the three denial categories.

Moreover, any revisions to the appeal process should only apply prospectively. This proposed process should not apply retroactively to any existing petitions. Pending applications should not inadvertently get denied for procedural reasons under the new rules.

It will be challenging for California's load serving entities to achieve 50% renewable energy by 2030. The CEC needs a flexible appeal process to administratively resolve certification and eligibility disputes appropriately. The appeal process should include all aspects of the RPS program; otherwise, litigation becomes the only alternative to those issues removed from the scope of the process. The CEC's proposed revisions to this section of the Guidebook make the appeal process unnecessarily restrictive, and forces disputes to be settled in the courts when it could otherwise be remedied in an administrative process.

LADWP would like to keep the administrative appeal structure as it existed in the eighth guidebook, and request additional changes to include the following: 1) if within 30 days of receiving a complete petition the Executive Director does not provide a response or action to the POU, the request found in the petition is deemed approved; 2) If within 45 days of receiving a complete letter of appeal, the Energy Commission Chair does not issue a written order or response to the POU, the redress found in the appeal is deemed granted; 3) If there is no decision provided to the POU on a complete petition or appeal within a year of filing, then the request found in the petition or appeal is deemed approved.

8.D.1. Revocation of RPS Certification

The Executive Director is provided with broad authority and discretion to revoke RPS certification. On p.83, the draft guidebook states that the Executive Director can revoke the RPS certification of a facility "if it is determined that the RPS-certified facility no longer satisfies the requisite eligibility requirements". This implies that the RPS certifications for all facilities are constantly in jeopardy as the RPS eligibility guidebook is revised.

It is not reasonable to evaluate facilities based on new eligibility standards that were not in effect during the facility's procurement or certification process. Facilities should only be evaluated based on the edition of eligibility guidebook that was in effect during the procurement or certification process for that facility. If guidebook requirements change in the future, these facilities should be protected as long as they continue to satisfy all requirements set forth by the appropriate eligibility guidebook edition that was used to determine initial certification for the facility.

In addition, the ability to revoke a certification within 15 days is simply untenable. The building of RPS-eligible facilities takes years of planning, environmental permitting, and many more months of financing and construction. The facilities built and certified should remain so, absent of fraud or misrepresentations.

The CEC should clarify that the revocation procedures do not apply to POUs for which the *Enforcement Procedures for the Renewables Portfolio Standard for Publicly Owned Electrical Utilities* contain the exclusive procedure relating to revocation.

8.D.2. Fraud and Misrepresentation

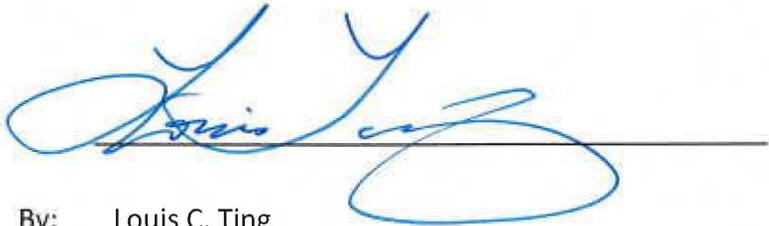
In this section titled Special Provisions, the draft guidebook explains that the Executive director can initiate an investigation of any RPS-certified facility if fraud or misrepresentation is suspected. P.83 of the draft guidebook states that “the Executive Director may take any action deemed appropriate, including, but not limited to, cancellation of RPS certification, and, with the concurrence of the Energy Commission, recommending the Attorney General initiate an investigation and prosecution as appropriate under applicable law.”

Based on basic principles of due process, there should be concrete findings of intentional misdeeds before revoking an RPS certification. Furthermore, the Executive director should be required to formally notify the entity of fraudulent suspicions. At the conclusion of the investigation, the entity should also have the opportunity to review the findings and dispute any of the information before any action is taken.

CONCLUSION

In closing, LADWP appreciates the opportunity to participate in the rulemaking process regarding the Draft Renewables Portfolio Standard Eligibility Guidebook, Ninth Edition. We look forward to continue working with the California Energy Commission to help shape effective regulations that will benefit the health, safety, and security of all California residents.

Respectfully Submitted,



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