BEFORE THE ENERGY COMMISSION
OF THE STATE OF CALIFORNIA

In the matter of:	)	Docket No. 03-RPS-1078
	)	& 11-RPS-01 RPS Proceeding
Developing Regulations and Guidelines	)	
For the 33 Percent Renewables	)	Docket No. 02-REN-1038
Portfolio Standard	)	Renewable Energy Program

COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER TO THE CALIFORNIA ENERGY COMMISSION'S STAFF WORKSHOP ON 2008-2010 RPS VERIFICATION AND SB 2 (1X) RPS PROCUREMENT VERIFICATION

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Dated October 9, 2012

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Pursuant to the procedures established by the California Energy Commission (Energy Commission, or CEC), the Los Angeles Department of Water and Power (LADWP) respectfully submits these comments in response to the CEC Staff Workshop on 2008-2010 Renewables Portfolio Standard (RPS) Verification and Senate Bill (SB) 2 (1X) RPS Procurement Verification, held on September 21, 2012.

I. INTRODUCTION

The City of Los Angeles is a municipal corporation and charter city organized under the provisions of the California Constitution. LADWP is a proprietary department of the City of Los Angeles, pursuant to the Los Angeles City Charter, whose governing structure includes the Mayor, fifteen member City Council, and a five-member Board of Water and Power Commissioners. As the third largest electric utility in the state 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.

As a result of combined regulatory mandates for increased renewable energy, emissions performance standard on fossil fuel generation, energy efficiency, distributed solar, reduction in greenhouse gas emissions, and the elimination of once-through cooling from coastal power plants, LADWP is facing a utility-wide transformation and making billions of dollars in investments on behalf of its ratepayers to replace about 70 percent of its resources over the next 17 years that it has relied upon for the last 50 years.

California's most recent legislation for its RPS Program requires "each local publicly owned electric utility to procure a minimum quantity of electricity products from eligible renewable energy resources." Since LADWP is a local publicly owned electric utility (POU), it is required to comply with Senate Bill (SB) 2 (1X).

II. COMMENTS

The LADWP would like to take this opportunity to thank CEC staff for their outreach efforts in seeking stakeholder comments on various important outstanding RPS issues, such as the verification of 2008-2010 RPS procurement and the documentation required to categorize resources with their appropriate Portfolio Content Categories (PCC).

III. COMMENTS

a. "Rules in Place"

As in prior Comments, the LADWP disagrees with the Energy Commission's interpretation of the "rules in place" clause found in §399.16(d)(1):

> "(d) Any contract or ownership agreement originally executed prior to June 1, 2010 shall count in full towards the procurement requirements established

pursuant to this article, if all of the following conditions are met:
(1) the renewable energy resource was eligible under the ***rules in place*** as of the date when the contract was executed." (emphasis added)

§399.16(d) was specifically written to respect those historical procurement decisions made by utilities prior to the enactment of new statewide RPS standards. Resources that comply with this section are exempt from the bucket requirements and the California Public Utilities Commission (CPUC) has determined that such resources count towards the percentage RPS targets, but may not count (nor need be counted) towards the bucket requirements. The phrase "rules in place" clearly refers to the applicable rules in place when the resource was procured. The applicable rules for Investor-Owned Utilities (IOUs) and POUs differed prior to SB2 (1X). Therefore the "rules in place" at the time would be either the CPUC and/or CEC rules in the case of IOUs, or, in the case of POUs, rules promulgated by POU Governing Boards pursuant to Public Utilities Code Section 387 required that each government body of a local POU be responsible for implementing and enforcing an RPS that recognizes the intent of the Legislature to encourage renewable resources.[1]

Prior to the effective date of SB 2 (1X) (i.e. December 10, 2011), the "law of the land" was SB 1078 §387 RPS Policies adopted by the Governing Boards of POUs, *not* the CEC's Certification Process. Further, several Senate

[1] SB 2 (1X) Bill Analysis, Senate Energy Utilities and Communications Committee Summary, date February 15, 2011. Available at: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sbx1_2_cfa_20110214_141136_sen_comm.html
SB 2 (1X) Bill Analysis, Senate Appropriations Committee Fiscal, Dated February 23, 2011. Available at: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sbx1_2_cfa_20110223_101343_sen_comm.html

Committee analyses and the bill author of SB 2 (1X) have previously confirmed the intent to grandfather all resources procured prior to June 1, 2010:

> ***"This bill grandfathers all contracts consummated by an IOU, ESP, or POU prior to June 1, 2010.*** Going forward all contracts for an electricity product would be required to meet the requirements of a "loading order" that mandates minimum and maximum quantities of three product categories (or "buckets") which includes renewable resources directly connected to a California balancing authority or provided in real time without substitution from another energy source, energy not connected or delivered in real time yet still delivering electricity, and unbundled renewable energy credits."[2] (emphasis added)

To assume that that the "rules in place" refers only to being certified in accordance with the relevant CEC RPS Guidebook in effect at the time, is to trump the Legislature intent by retroactively applying certification requirements to POUs that were not subject to the CEC's eligibility rules, and circumvents the authority granted to the POU Governing Board's under the former §387.

It is clear that the Legislature did not intend to invalidate prior POU Governing Board RPS decisions authority, and RPS investments. There is no discussion or financial analysis that contemplates the rate impacts associated with a taking away of POU eligible resources under SB 2 (1X). A review of the legislative record related to the Appropriations Committee does not indicate any financial impacts related to such interpretation. If it was expected that the Legislature's intent was to retroactively apply IOU-only standards to POUs, as indicated by this proposed CEC interpretation, then that would have a significant financial impact on State and governmental agencies, such as school districts, electric utility bills within POU service territories, and it would have been

[2] SB 2 (1X) Bill Analysis, Senate Rules Committee, Dated February 23, 2012. Available at: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sbx1_2_cfa_20110223_155225_sen_floor.html

incumbent upon the Appropriations Committee consultants to provide an fiscal impact analysis to the Committee. None could be found.

Therefore, the LADWP respectfully requests that the CEC change its interpretation of “rules in place” to recognize that for POUs, the “rules in place” were the POUs RPS Policy as adopted by the POU governing boards, not compliance with legacy CEC’s RPS Eligibility Guidebooks.

b. Portfolio Content Category “0” Verification

Resources that count towards PCC 0 need to have a simplified verification process separate from the proposed verification processes for the other PCCs. For example, the proposed PCC 1 verification process suggests that the PCC designation of an electricity product will be determined based on the difference between the scheduled and actual energy deliveries. If a utility’s actual energy delivery is greater than the scheduled energy delivery, the excess electricity products generated will be placed in either PCC 2 or 3. In the case of grandfathered resources, the distinction between PCC 1 and PCC 2/3 electricity products is irrelevant: All generated electricity products fall under PCC 0.

Rather than forcing utilities to go through an onerous PCC verification process, which ultimately leads to placing the electricity products in PCC 0, the CEC should simplify the verification process for resources that are grandfathered. The CEC should only utilize WREGIS data and actual energy deliveries to determine PCC 0 electricity products. A separate and simplified verification process for PCC 0 resources should facilitate a smoother transition between the legacy and new RPS programs.

c. Historic Biomethane Verification Criteria

On Attachment A-2 Verification of Biomethane Related Claims for 2008-2010, the CEC itemizes the requirements for the use of biomethane obtained through a natural gas pipeline system. LADWP is concerned about the retroactive application of Criteria No. 4, which states that:

> "The gas must be used at a facility that has been certified as RPS-eligible. As part of the application for certification, the applicant must attest that the RPS-eligible gas will be nominated to that facility or nominated to the LSE-owned pipeline serving the designated facility."

As LADWP has previously stated, the CEC certification process was not applicable to the POUs until the passage of SB 2 (1X). Since POUs were not required to apply for certification, LADWP did not apply for certification for generation facilities using Biomethane.

If the CEC retroactively applies the certification process to these facilities, POUs risk losing RPS certification of such resources due to an unjustified technicality. The LADWP asks the CEC to allow POUs to apply for certification for such generating facilities to align with existing certification requirements for grandfathered resources (which LADWP has previously requested alterations to) or remove this criteria to reflect the POU process prior to SB 2 (1X) of such facilities that utilize biomethane.

d. PCC 1 Excess Generation Should Never Be Redirected to Count as PCC 3

On the second presentation made by the CEC at the workshop[3], the CEC states that if a utility's actual renewable energy delivery is greater than the scheduled energy delivery, the excess electricity products generated will be placed in either PCC 2 or 3. LADWP strongly believes that the excess renewable energy generated should, under no circumstance, count other than towards PCC 1, as this energy would still clearly be bundled and would still meet the definition of a PCC 1 resource.

For LADWP, the amount of times a specific renewable resource over-generates is fairly common and can easily lead to premature saturation of PCC 3 before the end of a compliance period. PCC 3 is essentially being utilized as a "contingency" bucket where utilities can make-up shortfalls towards the end of a compliance period and avoid enforcement actions. This interpretation of the statute would potentially saturate PCC 3 before the end of the compliance period and would constrain this flexibility.

The Power Purchase Agreements (PPA's) signed by LADWP typically require the utility to take all generation from the renewable project. Taking only the scheduled is not a discretionary action and most contracts were not negotiated and executed to allow different payments for scheduled versus actual energy.

[3] RPS Procurement Reporting and Verification under SB 2 (1X) presentation, Slide 19, dated September 21, 2012

Therefore, the LADWP asks the CEC to classify these electricity products under PCC 1, as these excess electricity products would still meet the interconnection and bundled product requirements of PCC 1.

e. Critical Definitions are still Missing

As LADWP has previously mentioned in its comments on the draft Regulations[4], the CEC needs to develop critical bucket definitions before even determining verification for such buckets. LADWP again recommends that the CEC consider adding the following definitions:

i. Firmed and Shaped

Given that PCC 2 electricity products heavily rely on the term "Firmed and Shaped," LADWP recommends that the CEC define the term "Firmed and Shaped." The definition provided by the CPUC is acceptable:

> **"Firmed and Shaped"** means transactions that provide substitute energy in the same quantity as the contracted-for RPS-eligible generation, which can be sent in a manner that meets the timing and quantity requirements of the POU. The original RPS-eligible generation is consumed elsewhere, typically but not necessarily close to the generator.[5]

[4] Comments from the Los Angeles Department of Water and Power to the California Energy Commission's 33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations for Publicly Owned Electric Utilities, dated August 13, 2012. Available at: http://www.energy.ca.gov/portfolio/documents/2012-07-30_workshop/comments/LADWP_Response_to_RPS_Draft_Regulations_for_POUs_2012-08-13_TN-66935.pdf

[5] Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program, Page 46, California Public Utilities Commission, Decision 11-12-052, dated December 15, 2011. Available at: http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/156060.pdf

ii. Incremental Electricity

The LADWP recommends that the CEC define the term "Incremental Electricity" and utilize the definition adopted by the CPUC:

> **"Incremental Electricity"** means electricity not in the portfolio of the POU claiming the transaction for RPS compliance prior to a Firmed and Shaped Transaction.[6]

iii. Count In Full

Given that the definition for "Count in Full" significantly impacts the treatment of pre-June 1, 2010 resources, LADWP recommends that the CEC define the term. LADWP recommends that the CEC adopt a definition similar to the definition adopted by the CPUC:

> **"Count In Full"** means that resources procured prior to June 1, 2010 count RPS compliance without regard to Portfolio Content Category or Portfolio Balance Requirements for procurement meeting the requirements of the Public Utilities Code Section 399.12(b)(1) or Section 399.16(b)(3), respectively. Such procurement is outside the Portfolio Balance Requirements it neither counts nor does not count in any particular Portfolio Content Category.
>
> **(1)** At the discretion of the POU, procurement that meets current RPS Eligibility requirements at the time the entity files for certification will count towards the Portfolio Content Categories and will be accounted for in the Portfolio Balance Requirements.

f. PCC 1 Verification Automation is Necessary

The LADWP is troubled with the fact that the CEC is still currently verifying energy from 2008-2010 now that we are in the 2012 compliance year, especially since the pre-SB 2 (1X) procurement did not rely on PCCs. In order for the proposed verifications to be sustainable, the CEC needs to work on automating PCC electricity product verification. Specifically, the CEC needs to automate data

[6] Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program, Page 49, California Public Utilities Commission, Decision 11-12-052, dated December 15, 2011. Available at: http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/156060.pdf

exports of actual meter readings and of NERC e-Tags showing scheduled energy. This proposed automation could prevent the need for additional staffing and costs.

g. Firmed and Shaped Contracts 12-Month Requirement

At the Staff workshop, the CEC mentioned that for the PCC 2 Reporting and Verification, the staff's preliminary expectations of required documentation for substitute energy was that such energy needs to be scheduled into a California Balancing Authority in the same calendar year as the renewable energy is generated. Currently, as we have previously stated, this requirement is operationally infeasible. Several firming and shaping entities perform balancing in January and February for previous December energy, which conflicts with the CEC's preliminary expectation. In order to incorporate these existing needed operational requirements, the LADWP recommends that the CEC reconsider a ""rolling 12-month" approach, where a POU would be required to schedule substitute energy within 12 months from the date the electricity is generated. Further, SB 2 (1X) did not contemplate or establish criteria related to a timeframe requirement for firming and shaping. A calendar year approach to substitute energy would effectively defeat the purpose and grid benefits of firming and shaping energy in the October-December timeframe. Again, there is no statutory basis to preclude a rolling 12-month approach, moreover where there is an existing operational need for this approach.

h. Verification Process Must Include a Reconciliation Process

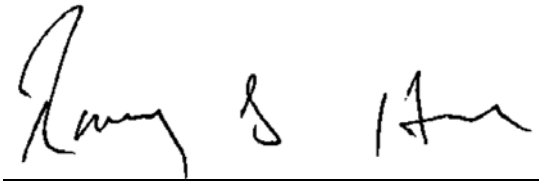
LADWP requests that the Energy Commission develops a process by which a utility can review CEC data, make comparisons to its own data, and rectify and explain any potential discrepancies prior to the CEC making any final determinations with respect to Enforcement. As stated above, LADWP is troubled that the CEC is currently still verifying energy from 2008. As currently written, a difference in calculations could potentially result in a perceived violation going back four years, with no opportunity for a utility to correct the deficiency. Without such a process, enforcement of this policy will be inconsistent with other regulatory mandates, such as those in the environmental and reliability fields, wherein the regulated party has the opportunity to respond and correct the deficiency before receiving a violation and/or penalty.

IV. CONCLUSION

The LADWP remains committed to transitioning to a greater usage of a renewable energy resource mix in a cost-effective manner while maintaining grid reliability. We respectfully request that the CEC take into consideration LADWP's recommendations, as they are aimed to not only simplify the CEC's efforts in this RPS proceeding, but also conform with the intended outcome of SB 2 (1X). LADWP appreciates the opportunity to comment on this important proceeding and looks forward to working with the Energy Commission on these RPS matters.

Dated October 9, 2012

Respectfully Submitted,



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