CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov

April 10, 2014



Randy S. Howard
Los Angeles Department of Water & Power
111 N. Hope Street, Suite 921
Los Angeles, California 90012

RE: **Petition for Reconsideration of Application for Renewables Portfolio Standard Certification for the Castaic Power Plant, Units 3 and 5, RPS ID 62561A**

Dear Mr. Howard:

This is in response to your petition for reconsideration regarding the RPS certification of the Castaic Power Plant based on efficiency improvements to generating Units 3 and 5 of the plant, which is operated by the Los Angeles Department of Water & Power (LADWP). The petition is dated February 13, 2014, and was submitted on behalf of LADWP to the Energy Commission pursuant to Section VIII.C of the Energy Commission's *Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition* (*RPS Guidebook, 7th Edition*). Section VIII.C of the *RPS Guidebook, 7th Edition*, allows applicants to petition the Energy Commission's Executive Director for reconsideration if their application for RPS certification is denied or revoked. Under Section VIII.C such petitions will be considered only upon a showing that factors other than those described in the Energy Commission's guidelines for the RPS were applied by the Energy Commission in denying or revoking RPS certification.[1]

I have considered the information provided in the petition but must deny it, because the petition does not demonstrate Energy Commission staff applied factors other than those described in the *RPS Guidebook, 6th Edition,*[2] in denying certification of the Castaic Power Plant.

As discussed further below, it is clear from the petition that the Castaic Power Plant does not qualify for RPS eligibility based on the efficiency improvements to Unit 5. However, the facility may qualify for RPS eligibility based on the improvements to Unit 3 if LADWP can demonstrate these improvements were initiated on or after January 1, 2008, and were not included in a resource plan sponsored by LADWP prior to this date, and can demonstrate the facility satisfies all other requirements described in the *RPS Guidebook, 6th Edition*.

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[1] *Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition,* pg. 113.
[2] The *Renewables Portfolio Standard Eligibility Guidebook, Sixth Edition*, was adopted by the Energy Commission on August 9, 2012, and was in effect when LADWP submitted its application for RPS certification of the Castaic Power Plant in September 2012.

LADWP did not provide documentation with its application for certification to demonstrate these requirements were satisfied for the Unit 3 improvements.

The petition challenges Energy Commission staff's denial of LADWP's application for RPS certification of the Castaic Power Plant. This denial was conveyed to LADWP in a letter dated January 14, 2014, a copy of which is enclosed.

LADWP's petition identifies various reasons why, in LADWP's view, staff's denial of certification should be reconsidered, but the petition does not show that staff misapplied the eligibility criteria and related factors in the *RPS Guidebook, 6th Edition*, or applied criteria and factors other than those found in the *RPS Guidebook, 6th Edition,* in denying certification. The reasons identified by LADWP for challenging staff's denial of RPS certification do not form a basis for revisiting this denial under Section VIII.C of the *RPS Guidebook, 7th Edition*. Each of these reasons is addressed separately in the enclosed memo from Energy Commission staff.

Applicable Eligibility Requirements

For the Castaic Power Plant to qualify for RPS certification under the category for "Incremental Hydroelectric Generation from Efficiency Improvements Regardless of Facility Output," LADWP must demonstrate the efficiency improvements to the Castaic Power Plant meet the requirements specified in Section II.B.5.d of the *RPS Guidebook, 6th Edition*, which provides in pertinent part as follows:

> "d. Incremental Hydroelectric Generation From Efficiency Improvements Regardless of Facility Output
>
> The incremental increase in generation that results from efficiency improvements to a hydroelectric facility, regardless of the electrical output of the facility, is eligible for the RPS if all of the following conditions are met:
>
> 1. The facility is owned by a retail seller or a local publicly owned electric utility.[3]
> 2. The facility was operational before January 1, 2007.
> 3. The efficiency improvements are initiated on or after January 1, 2008, are not the result of routine maintenance activities and were not included in any resource plan sponsored by the facility owner before January 1, 2008.
> 4. [...]"
>
> (*RPS Guidebook, 6th Edition*, pg. 23.)

In addition, the *RPS Guidebook, 6th Edition*, requires applicants seeking certification under this category to provide supporting documentation. This includes documentation showing when the existing hydroelectric facility commenced commercial operations, describing the efficiency improvements and when they were initiated and completed, demonstrating the

[3] Footnote omitted.

efficiency improvements are not the result of routine maintenance, and demonstrating the efficiency improvements were not included in any resource plan sponsored by the facility owner before January 1, 2008. (*RPS Guidebook, 6th Edition*, pg. 27.)

As explained in the January 14, 2014 denial letter, in evaluating the application of the Castaic Power Plant, Energy Commission staff reviewed copies of LADWP's integrated resource plans prior to 2008 and, based on information from LADWP's 2007 Integrated Resource Plan dated December 2007, determined the efficiency improvements to Units 3 and 5 were initiated prior to 2008 and/or included in a resource plan sponsored by LADWP prior to this date. Therefore, staff found the Castaic Power Plant was not eligible for RPS certification under the category for incremental hydroelectric generation from efficiency improvements.

Unit 5

Regarding Unit 5, LADWP's petition states the "improvements to Unit 5, namely the mechanical upgrades, were initiated in October 2007" and "fully operational in July 2008." (LADWP petition, pg. 5.) Based on this acknowledgement by LADWP that the improvements to Unit 5 were initiated prior to January 1, 2008, it is clear that the improvements to Unit 5 do not meet the RPS eligibility requirements under Section II.B.5.d of the *RPS Guidebook, 6th Edition*. Therefore, it was appropriate for staff to deny RPS certification of the Castaic Power Plant based on improvements to Unit 5.

Unit 3

Regarding Unit 3, LADWP's petition states "[t]he mechanical upgrades for the improvements for Unit 3 were initiated in October, 2008" and were "fully operational in July, 2009." (LADWP petition, pg. 5.) If in fact the improvements to Unit 3 were initiated after January 1, 2008, as stated in LADWP's petition, these improvements may meet the requirements of Section II.B.5.d of the *RPS Guidebook, 6th Edition*, provided the improvements were not included in a resource plan approved by LADWP prior to January 1, 2008. However, LADWP's application for certification of the Castaic Power Plant did not include supporting documentation to show that the improvements to Unit 3 were initiated after January 1, 2008, or documentation to show the improvements were not included in a resource plan sponsored by LADWP prior to this date.

As explained in the January 14, 2014 denial letter, research by Energy Commission staff suggests the improvements to Unit 3 may have been included in a resource plan sponsored by LADWP prior to January 1, 2008. Based on information in LADWP's petition, it is unclear whether or not this was the case.

If LADWP can provide documentation showing the improvements to Unit 3 were initiated after January 1, 2008, and were not included in a resource plan sponsored by LADWP prior to this date, it would be appropriate for staff to re-evaluate the RPS eligibility of the Castaic

Power Plant based on the improvements to Unit 3. To show the improvements to Unit 3 were not included in a resource plan sponsored by LADWP prior to January 1, 2008, the documentation could include, for example, a copy of the first LADWP resource plan that included the Unit 3 improvements along with a copy of the resolution or order of the LADWP Board of Commissioners that first approved this resource plan after January 1, 2008. To show the improvements to Unit 3 were initiated after January 1, 2008, the documentation could include, for example, copies of resolutions or orders of the LADWP Board of Commissioners approved after January 1, 2008, and approving funding for the improvements or authorizing LADWP staff to commence work on the improvements.

If this type of documentation is available, please contact Kate Zocchetti of the Energy Commission's Renewable Energy Division at [kate.zocchetti@energy.ca.gov] or (916) 653-4710 to discuss the documentation and the possible re-evaluation of the Castaic Power Plant's RPS eligibility. Please note that any such re-evaluation will require the submission of a new application for certification of the Castaic Power Plant along with all necessary information and supporting documentation as discussed in the enclosed List of Deficiencies. This list describes the information and documentation either missing from or deficient in LADWP's original application for certification of the Castaic Power Plant.

If you have any questions regarding this response, please contact Gabe Herrera of the Energy Commission's legal office at [gabe.herrera@energy.ca.gov] or (916) 654-5141.

Sincerely,

Robert P. Oglesby
Executive Director

Enclosures

cc: Gabe Herrera
Suzanne Korosec
Kate Zocchetti

**List of Deficiencies**
**Regarding Application for Certification of the Castaic Power Plant**

The following is a list of necessary information and supporting documentation that must be submitted with an application RPS certification under the category for Incremental Hydroelectric Generation From Efficiency Improvements Regardless of Facility Output. Some of this information was either not provided with LADWP's original application, not adequately addressed in the original application and supporting documentation, or needs to be revised from the original application to comply with the requirements of the RPS Guidebook. Included within the list below are references to the pertinent sections in the RPS Guidebook.

1. The application for certification must be for the entire facility as a whole, not for a single generating unit of the facility.
2. The application must be for a facility using multiple energy resources. Due to the unique nature of the hybridization of the facility – natural hydroelectric mixed with hydroelectric potential resulting from the consumption of nonrenewable energy resources or grid electricity – the submission of an alternative measurement methodology will be required. This alternative measurement methodology should consider the ratio of water pumped into the upper impoundment to the total water flowing through the turbines. Please see Section: III.B: Renewable Facilities Using Multiple Energy Resources, beginning on page 42.
3. Official documentation showing when the efficiency improvements were initiated and completed. See Section II.F.6: Additional Required Information for Hydroelectric Facilities, beginning on page 32.
4. A specific description of the relevant work done to the facility and how the work resulted in efficiency improvements and was not the result of routine maintenance. See Sections II.F.4: Incremental hydroelectric Generation From Efficiency Improvements Regardless of Facility Output, II.F.5: Eligible Efficiency Improvements, and II.F.6: Additional Required Information for Hydroelectric Facilities, beginning on pages 30, 31, 32 respectively.
5. Final resource plans containing the efficiency improvements made to Unit 3. If the improvements were considered in multiple final resource plans, all plans should be provided whether or not the plans were approved by LADWP. See Sections II.F.4: Incremental hydroelectric Generation From Efficiency Improvements Regardless of Facility Output and Section II.F.6: Additional Required Information for Hydroelectric Facilities, beginning on pages 30 and 32 respectively.
6. Certification provided by the State Water Resources Control Board pursuant to Section 401 of the Clean Water Act. If certification was not provided specifically for the efficiency improvements, please provide certification for the facility as a whole. If none is available, an explanation should be provided that contains references to relevant legislation, regulations, or other relevant documents created by the State Water Resources Control Board. See Sections II.F.4: Incremental hydroelectric Generation From Efficiency Improvements Regardless of Facility Output and Section

II.F.6: Additional Required Information for Hydroelectric Facilities, beginning on pages 30 and 32 respectively.

7. Documentation demonstrating that the efficiency improvements did not result in an adverse impact on instream beneficial uses, or cause a change in the volume or timing of streamflow. This demonstration should include information on studies performed, operational data, or some form of evidence beyond a generic fact sheet containing a statement of no impact provided by the facility owner. See Sections II.F.4: Incremental hydroelectric Generation From Efficiency Improvements Regardless of Facility Output and Section II.F.6: Additional Required Information for Hydroelectric Facilities, beginning on pages 30 and 32 respectively.
8. Documentation that the efficiency improvements resulted from a long-term financial commitment. The information provided with the original application suggests that only minimal expenditures were incurred prior to the completion of the efficiency improvements, while the majority of the expenditures occurred after the identified recommencement date of unit in question. See Sections II.F.4: Incremental hydroelectric Generation From Efficiency Improvements Regardless of Facility Output and Section II.F.6: Additional Required Information for Hydroelectric Facilities, beginning on pages 30 and 32 respectively.
9. The information necessary to determine the 20-year historic baseline and renewable baseline as described in the RPS Guidebook. The proposed approach submitted in the original application to measure the incremental generation is not in alignment with the RPS Guidebook; regardless of the accuracy of the proposed approach, Energy Commission staff does not have authority to allow this approach under the current guidebook. See Sections II.F.6: Additional Required Information for Hydroelectric Facilities and III.E Incremental Generation, beginning on pages 32 and 61 respectively.
10. Either confirmation that the FERC-issued license is the only permit applicable to this facility, or provision of all other applicable permits. See Section II.F.6: Additional Required Information for Hydroelectric Facilities, beginning on page 32.
11. The application for certification should explicitly address the following requirements, described on page 26 of the RPS Guidebook, 6th Edition, and page 33 of the RPS Guidebook, 7th Edition: (a) source water description; (b) water rights; (c) environmental documentation. While the previously submitted documents may contain this information, based on the "Supplemental Information for Incremental Hydroelectric Generation" sheet provided with the application, these requirements do not appear to have been explicitly addressed. Please provide information directly addressing these requirements or identify what portions of the previously provided documents directly address the requirements. See Section II.F.6: Additional Required Information for Hydroelectric Facilities, beginning on page 32.

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512

January 14, 2014

Oscar Alvarez
Los Angeles Department of Water and Power
111 N. Hope St., Rm 1246
Los Angeles, CA 90012

RE: Applications for Renewables Portfolio Standard (RPS) Certification for the Castaic Power Plant, RPS ID 62561A

Dear Mr. Alvarez:

This letter is regarding Los Angeles Department of Water and Power's (LADWP) applications for RPS certification for the Castaic Power Plant based on efficiency improvements to Unit 3 and Unit 5 and under the eligibility category for "Incremental Hydroelectric Generation from Efficiency Improvements Regardless of Facility Output."

After careful review of your applications, Energy Commission staff has determined that the Castaic Power Plant is not eligible for RPS certification under the above-noted eligibility category for the following reasons:

1. The efficiency improvements were initiated before January 1, 2008.
2. The portion of generation that contributes to pumped storage hydroelectric does not use an RPS-eligible resource.
3. Applications for generating units that are part of a single facility must be considered in a single application as one project.

Details of these findings are provided below.

1. Efficiency improvements at the facility were initiated before January 1, 2008, which does not meet the Energy Commission's eligibility criteria for incremental hydroelectric facilities related to the date efficiency improvements were initiated.

   To be eligible for RPS certification, an electrical generation facility must satisfy the eligibility criteria specified in the edition of the Energy Commission's Renewables Portfolio Standard Eligibility Guidebook that is in effect at the time of application for certification. The *Renewables Portfolio Standard Eligibility Guidebook, Sixth Edition* (*RPS Eligibility Guidebook*), adopted in August 2012, governs the applications you submitted for the Castaic Power Plant.

   Chapter II, Section B.5.d, of the *RPS Eligibility Guidebook, Sixth Edition,* specifies the eligibility criteria for incremental hydroelectric generation from efficiency improvements, and provides in pertinent parts as follows:

   "d. Incremental Hydroelectric Generation From Efficiency Improvements Regardless of Facility Output

The incremental increase in generation that results from efficiency improvements to a hydroelectric facility, regardless of the electrical output of the facility, is eligible for the RPS if all of the following conditions are met:

1. The facility is owned by a retail seller or a local publicly owned electric utility.[1]
2. The facility was operational before January 1, 2007.
3. *The efficiency improvements are initiated on or after January 1, 2008*, are not the result of routine maintenance activities and were not included in any resource plan sponsored by the facility owner before January 1, 2008.
4. ..."

(*RPS Eligibility Guidebook, Sixth Edition*, pg. 23.)

In addition, the *RPS Eligibility Guidebook* requires applicants seeking RPS certification for incremental hydroelectric generation due to efficiency improvements to provide the following documentation (*RPS Eligibility Guidebook, Sixth Edition*, pg. 27):

a. Documentation showing when the existing hydroelectric facility commenced commercial operations.
b. Documentation describing the efficiency improvements and when they were initiated and completed.
c. Documentation demonstrating that the efficiency improvements are not the result of routine maintenance.
d. Documentation demonstrating that the efficiency improvements were not included in any resource plan sponsored by the facility owner before January 1, 2008. An example of this documentation is submission of pertinent sections of a resource plan.

Energy Commission staff has reviewed copies of LADWP's integrated resource plans (IRPs) prior to 2008 and, based on information from LADWP's 2007 IRP dated December 2007, it appears that the efficiency improvements to Unit 3 and Unit 5 were initiated prior to 2008. Therefore, the Castaic Power Plant is not eligible for RPS certification under the category for incremental hydroelectric generation from efficiency improvements, because this category of eligibility requires the efficiency improvements to be initiated on or after January 1, 2008.

Information on efficiency improvements to Unit 3 and Unit 5 are discussed on page 44 of LADWP's 2007 IRP, which states:

"1) Refurbish Castaic unit 7. This unit provides automatic generation control for LADWP's power system. This unit should be refurbished and made as efficient as possible. The use of this unit is expected to increase with increasing amount of renewable resources. This project should have an in-service date of December 2011."

"4) Retrofit any hydro power plants along LADPW's aqueduct system to have the ability to follow load, if feasible. This project should have an in-service date of December 2013."

"6) Retrofitting some Castaic pump-turbine units to have variable speed pumping ability. This project should have an in-service date of December 2014."

"7) Currently, the Castaic upgrade project is refurbishing 5 of the 6 pump-turbine units. Further studies should be done to evaluate if refurbishing the 6th pump-turbine unit is cost-effective, as the preliminary LADWP wind integration study indicated that Castaic

[1] Footnote omitted.

would increase its pumping by 89% when the expected wind farms come on-line. This project should have an in-service date of December 2014."

Based on information in LADWP's 2007 IRP, the efficiency improvements to units 3 and 5 may have been contemplated as early as 2000. Page 6 of the 2007 IRP states:

"2000 IRP Accomplishments
Significant progress has been made in implementing the goals of the 2000 IRP since its approval by the Board of Water and Power Commissioners and the Los Angeles City Council. Some of the key goals that were achieved are listed below:

- A 80 MW capacity upgrade and life extension project for the Castaic Pumped Storage Power Plant is under construction. To date, three of the six main units have been upgraded."

Additionally, page 20 of the 2007 IRP states:

"Castaic Pumped Storage Power Plant capacity is increased by 20 MW per year, for a total increase of 80 MW (increasing plant capacity from 1175 MW to 1255 MW) by 2009, resulting from its plant upgrade program."

According to information from HydroWorld.com, a comprehensive website for the global hydroelectric community, these "upgrades were started in 2001 and is (sic) 65 percent complete. Work on four of the seven generating units and all five transformers has been completed. The upgrade of the fifth unit is scheduled to be complete in June 2009." The upgrades were referred to as the "Castaic Modernization Project" which is "a refurbishment and upgrade of this pumped-storage plant on the California State Aqueduct. The work is intended to improve plant reliability and efficiency and increase its capacity. The scope of work is to mechanically upgrade the main turbine-generator units, replace five of the seven main transformers, install new generator stators, and replace the hard-wired control system with a distributed control system (DCS)." (HydroWorld January 2009, accessed from www.hydroworld.com/articles/hr/print/volume-27/issue-8/feature-articles/project-profiles/snapshots-of-north-american-rehabilitation.html)

2. The portion of the generation from the Castaic Power Plant that may be described as resulting from pumped storage hydroelectric, or pumped hydro, does not meet the Energy Commission's eligibility requirements for pumped hydro because the energy used to pump the water into the storage reservoir is not an eligible renewable energy resource .

Pumped hydro is defined in the *Overall Program Guidebook, Fifth Edition,* as follows:

**"Pumped hydro** — an energy storage technology consisting of two water reservoirs separated vertically; during off-peak hours, water is pumped from the lower reservoir to the upper reservoir, allowing the off-peak electrical energy to be stored indefinitely as gravitational energy in the upper reservoir. During peak hours, water from the upper reservoir may be released and passed through hydraulic turbines to generate electricity as needed. (*Overall Program Guidebook, Fifth Edition,* page 25)"

Pumped storage hydroelectric is further addressed in the *RPS Eligibility Guidebook, Sixth Edition*, on page 24:

> "A pumped storage hydroelectric facility may qualify for the RPS if: 1) the facility meets the eligibility requirements for small hydroelectric facilities, and 2) the energy used to pump the water into the storage reservoir qualifies as an RPS-eligible resource. The amount of energy that may qualify for the RPS is the amount of electricity dispatched from the pumped storage facility."

It is staff's understanding that the Castaic reservoir is filled by pumping water from Elderberry Forebay back into Pyramid Lake during the off-peak periods using a non-RPS eligible energy resource, or using renewable electricity without the retirement of the associated RECs for this purpose. If this is an accurate description of operations of the Castaic Power Plant, then the Castaic Power Plant would not meet the requirements to be an RPS-eligible pumped hydroelectric storage due to the use of energy inputs that are not eligible renewable energy inputs. Additionally, the Castaic Pumped Storage Power Plant does not meet the RPS eligibility requirements for a small hydroelectric facility due to its nameplate capacity. As a result, it appears any application for the certification of the Castaic Power Plant must be made for a hydroelectric facility that uses a nonrenewable energy input. Given the unique nature of this approach, an alternative energy input measurement method would need to be proposed and evaluated by Energy Commission staff as part of the application process. The contribution of the nonrenewable energy input would also need to be accounted for in the baseline calculations.

3. Lastly, for purposes of future RPS certification applications, please note that all generating units that are part of a single project, or facility, as defined in the *Overall Program Guidebook, Fifth Edition*, must be included in a single application.

   Based on the information available to Energy Commission staff, this would require that the entire Castaic Power Plant be represented in a single application. It is the generation and energy input for the entire facility that will need to be considered when evaluating the incremental generation from the Castaic Power Plant.

If you believe the Castaic Power Plant is eligible for RPS certification under an eligibility category other than "Incremental Hydroelectric Generation from Efficiency Improvements Regardless of Facility Output", you may reapply by submitting a new application in accordance with the *RPS Eligibility Guidebook, Seventh Edition* using the application forms provided in that document, which can be found at: [www.energy.ca.gov/renewables/documents/index.html#rps].

If you have any questions, please do not hesitate to contact Kate Zocchetti at (916) 653-4710 or <kate.zocchetti@energy.ca.gov>.

Sincerely,

Suzanne Korosec

SUZANNE KOROSEC
Deputy Director
Renewable Energy Division

Enclosures

State of California California Natural Resources Agency

# Memorandum

To: Robert P. Oglesby, Executive Director
Drew Bohan, Chief Deputy Director

Date : April 10, 2014

Telephone: CALNET (916) 654-4516
(916) 654-5141

From : Suzanne Korosec, Deputy Director, Renewable Energy Division
Gabe Herrera, Staff Counsel, Office of Chief Counsel
**California Energy Commission**
1516 Ninth Street
Sacramento CA 95814-5512

Subject: **LADWP Petition for Reconsideration Regarding the RPS Certification of the Castaic Power Plant, Units 3 and 5, RPS ID 62561A**

This memo addresses the petition for reconsideration submitted by the Los Angeles Department of Water & Power (LADWP) regarding the Renewables Portfolio Standard (RPS) certification of the Castaic Power Plant based on efficiency improvements to generating Units 3 and 5 of the plant. The petition is dated February 13, 2014, and was submitted pursuant to Section VIII.C of the Energy Commission's *Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition* (*RPS Guidebook, 7th Edition*). Section VIII.C of the *RPS Guidebook, 7th Edition*, allows applicants to petition the Energy Commission's Executive Director for reconsideration if their application for RPS certification is denied or revoked. Under Section VIII.C, such petitions will be considered only upon a showing that factors other than those described in the Energy Commission's guidelines for the RPS were applied by the Energy Commission in denying or revoking RPS certification.[1]

Energy Commission staff recommend that the petition be denied, because the petition does not demonstrate Energy Commission staff applied factors other than those described in the *RPS Guidebook, 6th Edition,*[2] in denying certification of the Castaic Power Plant. Instead, the petition identifies various other reasons why, in LADWP's view, staff's denial of certification should be reconsidered.

It is clear from the petition itself that the Castaic Power Plant does not qualify for RPS eligibility based on the efficiency improvements to Unit 5. The Castaic Power Plant may qualify for RPS eligibility based on the improvements to Unit 3 if LADWP can demonstrate these improvements were initiated on or after January 1, 2008, and were not included in a resource plan sponsored by LADWP prior to this date, and can demonstrate the facility satisfies all other requirements described in the *RPS Guidebook, 6th Edition*. LADWP did not provide documentation with its application for certification to demonstrate these requirements were satisfied for the Unit 3 improvements.

[1] *Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition,* pg. 113.
[2] The *Renewables Portfolio Standard Eligibility Guidebook, Sixth Edition*, was adopted by the Energy Commission on August 9, 2012, and was in effect when LADWP submitted its application for RPS certification of the Castaic Power Plant in September 2012.

Background

LADWP's application for certification of the Castaic Power Plant was denied by Energy Commission staff in a letter dated January 14, 2014. The denial letter explains that LADWP's application for certification was denied under the RPS eligibility category for "Incremental Hydroelectric Generation from Efficiency Improvements Regardless of Facility Output," because the efficiency improvements to Units 3 and 5 were initiated before January 1, 2008, and/or included in a resource plan sponsored by LADWP prior to this date. In addition, denial letter explains that some of the generation that contributes to pumped storage hydroelectric generation from the Castaic Power Plant does not use an RPS-eligible resource. Lastly, the denial letter explains that certification under the category of "Incremental Hydroelectric Generation from Efficiency Improvements Regardless of Facility Output" is evaluated based on the generation from all generating units of a facility as a whole, and not based on the generation of any one unit in isolation. A copy of the denial letter was included with LADWP's petition.

Applicable Eligibility Requirements

For the Castaic Power Plant to qualify for RPS certification under the category for "Incremental Hydroelectric Generation from Efficiency Improvements Regardless of Facility Output," LADWP must demonstrate the efficiency improvements to the Castaic Power Plant meet the requirements specified in Section II.B.5.d of the *RPS Guidebook, 6th Edition*, which provides in pertinent part as follows:

> "d. Incremental Hydroelectric Generation From Efficiency Improvements Regardless of Facility Output
>
> The incremental increase in generation that results from efficiency improvements to a hydroelectric facility, regardless of the electrical output of the facility, is eligible for the RPS if all of the following conditions are met:
>
> 1. The facility is owned by a retail seller or a local publicly owned electric utility.[3]
> 2. The facility was operational before January 1, 2007.
> 3. The efficiency improvements are initiated on or after January 1, 2008, are not the result of routine maintenance activities and were not included in any resource plan sponsored by the facility owner before January 1, 2008.
> 4. [...]"
>
> (*RPS Guidebook, 6th Edition*, pg. 23.)

In addition, the *RPS Guidebook, 6th Edition*, requires applicants seeking certification under this category to provide supporting documentation. This includes documentation showing when the existing hydroelectric facility commenced commercial operations, describing the efficiency improvements and when they were initiated and completed, demonstrating the efficiency improvements are not the result of routine maintenance, and demonstrating the efficiency improvements were not included in any resource plan sponsored by the facility owner before January 1, 2008. (*RPS Guidebook, 6th Edition*, pg. 27.)

As explained in the January 14, 2014 denial letter, in evaluating the application of the Castaic Power Plant, Energy Commission staff reviewed copies of LADWP's integrated resource plans

[3] Footnote omitted.

prior to 2008 and, based on information from LADWP's 2007 Integrated Resource Plan dated December 2007, determined the efficiency improvements to Units 3 and 5 were initiated prior to 2008 and/or included in a resource plan sponsored by LADWP prior to this date. Therefore, staff found the Castaic Power Plant was not eligible for RPS certification under the category for incremental hydroelectric generation from efficiency improvements.

Unit 5

Regarding Unit 5, LADWP's petition states the "improvements to Unit 5, namely the mechanical upgrades, were initiated in October 2007" and "fully operational in July 2008." (LADWP petition, pg. 5.) Based on this acknowledgement by LADWP that the improvements to Unit 5 were initiated prior to January 1, 2008, it is clear that the improvements to Unit 5 do not meet the RPS eligibility requirements under Section II.B.5.d of the *RPS Guidebook, 6th Edition*. Therefore, it was appropriate for staff to deny RPS certification of the Castaic Power Plant based on improvements to Unit 5.

Unit 3

Regarding Unit 3, LADWP's petition states "[t]he mechanical upgrades for the improvements for Unit 3 were initiated in October, 2008" and were "fully operational in July, 2009." (LADWP petition, pg. 5.) If in fact the improvements to Unit 3 were initiated after January 1, 2008, as stated in LADWP's petition, these improvements may meet the requirements of Section II.B.5.d of the *RPS Guidebook, 6th Edition*, provided the improvements were not included in a resource plan approved by LADWP prior to January 1, 2008. However, LADWP's application for certification of the Castaic Power Plant did not include supporting documentation to show that the improvements to Unit 3 were initiated after January 1, 2008, or documentation to show the improvements were not included in a resource plan sponsored by LADWP prior to this date.

As explained in the January 14, 2014 denial letter, research by Energy Commission staff suggests the improvements to Unit 3 may have been included in a resource plan sponsored by LADWP prior to January 1, 2008. Based on information in LADWP's petition, it is unclear whether or not this was the case. If LADWP can provide documentation showing the improvements to Unit 3 were initiated after January 1, 2008, and were not included in a resource plan sponsored by LADWP prior to this date, it may be appropriate for staff to re-evaluate the RPS eligibility of the Castaic Power Plant based on the improvements to Unit 3.

Basis of LADWP's Petition

LADWP's petition lays out the following reasons for challenging staff's denial of certification.

1. The Energy Commission is required to certify for the RPS the resources of a local publicly owned electric utility (POU) that were included by the POU in its voluntary RPS program implemented pursuant to former Public Utilities Code (PUC) section 387;

2. The reasons provided by staff for denying certification should be reconsidered based on (a) an assessment of each of the hydroelectric units of the Castaic Power Plant, (b) the improvements to each unit were initiated within the timeframe allowing the units to be certified under the "grandfathering" provision of PUC section 399.12 and the eligibility of facilities under Public Resources Code (PRC) section 25741, and (c) the inapplicability of

pump storage eligibility criteria in the *Renewable Portfolio Standard Guidebook, Sixth Edition.* (*RPS Guidebook, 6th Edition*);

3. The efficiency improvements to Units 3 and 5 qualify for RPS certification under the eligibility criteria of PUC section 399.12.5, if aligned with earlier versions of PUC section 399.12 and PRC section 25741, before these laws were amended by Senate Bill X1-2;[4]

4. The legislative policy goals expressed in PUC section 399.11 are supported by the efficiency improvements to the Castaic Power Plant; and

5. Staff's delayed processing of the application for certification of the Castaic Power Plant prevented LADWP from purchasing renewable energy credits during the first compliance period of the RPS program.

The petition identifies the above reasons why, in LADWP's view, staff's denial of certification should be reconsidered, but the petition does not show that staff misapplied the eligibility criteria and related factors in the *RPS Guidebook, 6th Edition*, or applied criteria and factors other than those found in the *RPS Guidebook, 6th Edition,* in denying certification.

The reasons identified in LADWP's petition for challenging staff's denial of RPS certification do not form a basis for revisiting this denial under Section VIII.C of the *RPS Guidebook, 7th Edition*. Each of these reasons is discussed separately below.

Required Certification of POU Resources Under PUC Section 387

LADWP argues the Energy Commission is required to certify POU resources that were used by the POU to satisfy its voluntary RPS program pursuant to former PUC Section 387. (LADWP petition, pg. 2.)

The Energy Commission is not required to certify all resources that were included in the voluntary RPS programs implemented by POUs pursuant to former PUC section 387.[5] The Energy Commission is required to certify only those resources that meet the "grandfathering" provisions of PUC section 399.12.5 (e)(1)(C), as enacted by SBX1-2.

PUC section 399.12.5 (e)(1)(C) provides in pertinent part as follows:

> (e) "Eligible renewable energy resource" means an electrical generating facility that meets the definition of a "renewable electrical generation facility" in Section 25741 of the Public Resources Code, subject to the following:
> (1) [...]
> (C) A facility approved by the governing board of a local publicly owned electric utility prior to June 1, 2010, for procurement to satisfy renewable energy procurement obligations adopted pursuant to former Section 387, shall be certified as an eligible renewable energy resource by the Energy Commission pursuant to this article, **if the facility is a**

[4] SB X1-2 (Stats. 2011, 1st ex. sess., ch. 1), effective December 10, 2011.
[5] Public Utilities Code section 387 was repealed by SBX1-2.

**"renewable electrical generation facility" as defined in Section 25741 of the Public Resources Code."**

(Pub. Util. Code sec. 399.12.5, subd. (e)(1)(A). Emphasis added.)

PRC section 25741 (a)(1) defines a "renewable electrical generation facility" as follows:

(a) "Renewable electrical generation facility" means a facility that meets all of the following criteria:
(1) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, **small hydroelectric generation of 30 megawatts or less**, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.
[...]"
(Pub. Res. Code sec. 25741, subd. (a)(1). Emphasis added.)

Under the grandfathering provision of PUC section 399.12.5 (e)(1)(C), the Energy Commission may certify a facility only if it was approved for procurement by the POU prior to June 1, 2010, and it meets the definition of a "renewable electrical generation facility" by using one of the resources specified in PRC section 25741 (a)(1). For a hydroelectric generation facility to qualify, the generating capacity of the facility must not exceed 30 megawatts (MW). The application for certification submitted by LADWP shows that the generating capacity of the Castaic Power Plant far exceeds the 30 MW cap of PRC section 25741 (a)(1), with the capacity of Units 3 and 5 each being 265 MW.

Had the Legislature intended the grandfathering provision of PUC section 399.12.5 (e)(1)(C) to apply to all procurement approved by a POU prior to June 1, 2010, as LADWP argues, then portions of the POU-specific exceptions granted under PUC sections 399.30 (g), (h), (i), and (j), and portions of the new RPS eligibility criteria in PUC section 399.12 (e)(1)(A), applicable to hydroelectric generations units not exceeding 40 MW that are operated as part of water supply and conveyance system, would not have been necessary if these resources were already grandfathered by virtue of PUC section 399.12.5 (e)(1)(C). For example, LADWP's RPS policy, as amended in April 2008, identifies "Los Angeles Aqueduct hydroelectric plants" as an eligible resource under the RPS policy. (LADWP petition, attachments – *City of Los Angeles Department of Water and Power Renewables Portfolio Standard Policy As Amended April 2008*, pg. 2.) To the extent these aqueduct hydroelectric plants exceed the 30 MW limit for small hydroelectric facilities under PUC section 399.12, as existed prior to SBX1-2, the hydroelectric plants would have come within the grandfathering provision of PUC section 399.12 (e)(1)(A). As such, the new RPS eligibility category in PUC section 399.12 (e)(1)(A) for 40 MW hydroelectric generations units that are operated as part of a water supply and conveyance system may not have been necessary.

Assessment of Each Hydroelectric Unit of the Castaic Power Plant

LADWP argues it is appropriate to consider only the incremental generation of an improved unit when evaluating eligibility under the category of "Incremental Hydroelectric Generation from Efficiency Improvements Regardless of Facility Output," because a unit can be operated individually, has its own turbine generator, and has its own useful life. (LADWP petition, pgs. 4 - 5.)

The *RPS Guidebook, 6th Edition*, requires Energy Commission staff to consider the capacity of the entire facility when evaluating RPS eligibility under the category for "Incremental Hydroelectric Generation from Efficiency Improvements Regardless of Facility Output." As specified in Section II.B.5.d of the *RPS Guidebook, 6th Edition*, this RPS eligibility category applies to the "hydroelectric facility." For purpose of RPS certification, a facility is defined as a "project" in the Energy Commission's *Overall Program Guidebook, Fifth Edition,*[6] as follows:

> Project —for hydroelectric facilities under the Renewables Portfolio Standard Program, "project" refers to a group of one or more pieces of generating equipment and ancillary equipment necessary to interconnect to the transmission grid that is unequivocally separable from any other generating equipment or components. Two or more sets of generating equipment that are located within a one-mile radius of each other and are either 1) contiguous or 2) share common control or maintenance facilities and schedules shall constitute a single project, except in the following circumstances:
>
> 1. A conduit hydroelectric facility, certified as a conduit hydroelectric facility and not a small hydroelectric facility, may be considered a separate project even though the facility itself is part of a larger hydroelectric facility, provided that the larger hydroelectric facility commenced commercial operations prior to January 1, 2006, and the conduit hydroelectric facility commenced commercial operations on or after January 1, 2006, does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow, is separately metered to identify its generation, and is separately certified as RPS-eligible by the Energy Commission. A conduit hydroelectric facility certified as a small hydroelectric facility may not be part of a larger project without considering the capacity of the entire project in the certification.
>
> 2. For a small hydroelectric generation unit with a nameplate capacity not exceeding 40 megawatts that is operated as part of a water supply or conveyance system, as defined in this guidebook, and generation from the facility was under contract to, or owned by, a retail seller or local publicly owned electric utility as of December 31, 2005, the turbine and generator of the hydroelectric generation unit shall constitute a project.
>
> For all other electrical generation facilities under the Renewables Portfolio Standard Program, "project" refers to a group of one or more pieces of electrical generating equipment and ancillary equipment necessary to interconnect to the transmission grid that is unequivocally separable from any other electrical generating equipment or components. (*Overall Program Guidebook, Fifth Edition,* pg. 24.)

Based on this definition, all generating units comprising the Castaic Power Plant must be considered when evaluating RPS eligibility. While it may be true, as LADWP points out, that a generating unit can be operated individually, have its own turbine generator, and have its own useful life, the generation from both the improved and unimproved generating units of a facility must be considered, since a facility operator could increase the output of an improved unit by diverting water from the unimproved units. This would result in an artificial increase in the

[6] The *Overall Program Guidebook for the Renewable Energy Program, Fifth Edition*, was adopted by the Energy Commission on August 9, 2012, and in effect when LADWP submitted it application for RPS certification of the Castaic Power Plant in September 2012.

incremental generation of the improved unit, or creation of incremental generation, that would not occur if the operations of the entire facility were considered.

Improvements Were Initiated Within Timeframe for Grandfathering under PUC Section 399.12

LADWP argues that the improvements to Units 3 and 5 of the Castaic Power Plant were included as part of LADWP's voluntary RPS program approved prior to June 1, 2010, pursuant to former PUC section 387, and therefore are grandfathered under PUC section 399.12.5 (e)(1)(C).

As discussed above, the "grandfathering" provision of PUC section 399.12.5 (e)(1)(C) only applies if a facility is included in a POU's voluntary RPS program approved prior to June 1, 2010 pursuant to former PUC section 387, AND the facility meets the definition of a "renewable electrical generation facility" by using one of the resources specified in PRC section 25741 (a)(1). The capacity of the Castaic Power Plant exceeds 30 MW and therefore does not satisfy the definition of a "renewable electrical generation facility."

Criteria for Pump Storage Eligibility Do Not Apply

LADWP argues that the application for certification of the Castaic Power Plant was submitted under the category for efficiency improvements regardless of facility output, and not for certification as "small hydroelectric facilities," and therefore it is not appropriate to apply the criteria for pumped storage to the certification of the Castaic Power Plant, because this plant was not being certified as a small hydroelectric facility. (LADWP petition, pgs. 6 - 7.)

A hydroelectric facility that utilizes pump storage may qualify for the RPS only if the hydroelectric generation from the facility is attributed to an eligible renewable energy resource and the facility satisfies the eligibility requirements for a small hydroelectric facility. This is explained in the *RPS Guidebook, 6th Edition*, which states:

"A pumped storage hydroelectric facility may qualify for the RPS if: 1) the facility meets the eligibility requirements for small hydroelectric facilities, and 2) the energy used to pump the water into the storage reservoir qualifies as an RPS-eligible resource. The amount of energy that may qualify for the RPS is the amount of electricity dispatched from the pumped storage facility. Pumped storage facilities qualify for the RPS on the basis of the renewable energy used for pumping water into the storage reservoir, but the storage facilities will not be certified for the RPS as separate or distinct eligible renewable energy resources. A facility certified as RPS eligible may include an electricity storage device if it does not conflict with other RPS eligibility criteria." (*RPS Guidebook, 6th Edition*, pgs. 24-25.)

Unit Improvements Qualify for RPS Certification under PUC Section 399.12.5 if Aligned with Earlier Versions of PUC Section 399.12 and PRC Section 25741

LADWP argues that PUC section 399.12.5, which establishes requirements for the RPS eligibility of incremental generation from efficiency improvements to large hydroelectric facilities, must be harmonized and aligned with the RPS statute in effect prior to the enactment of SBX1-2, and if harmonized and aligned with the prior law, supports the RPS eligibility of improvements to the Castaic Power Plant under the grandfathering provisions of PUC section 399.12.5 (e)(1)(C). (LADWP petition, pg. 7.)

The crux of LADWP's argument is that the language of PUC section 399.12.5 was not amended by SBX1-2 and includes a cross reference to subdivision (c) of PUC section 399.12 – the subdivision that defined an "eligible renewable energy resource" for purposes of the RPS prior to SBX1-2. Subdivision (c) was renumbered subdivision "(e)" when the law was amended by SBX1-2, but SBX1-2 did not correct the cross reference to subdivision (c) in PUC section 399.12.5. LADWP argues that the Legislature's failure to update this cross reference in PUC section 399.12.5 supports LADWP's position that PUC section 399.12.5 is "stranded" and that the POU's voluntary RPS programs under former PUC section 387 "'should take precedence over a one-time reference in an out-of-date reference to PUC Section 399.12.5, with no explanation for a date reference or applicability to a POU, ...." (LADWP petition, pg. 11.)

As discussed above, the "grandfathering" provision of PUC section 399.12.5 (e)(1)(C) only applies to a facility if the facility is included in a POU's voluntary RPS program approved prior to June 1, 2010, pursuant to former PUC section 387, AND the facility meets the definition of a "renewable electrical generation facility" by using one of the resources specified in PRC section 25741 (a)(1). The capacity of the Castaic Power Plant exceeds 30 MW and therefore does not satisfy the definition of a "renewable electrical generation facility."

Moreover, the Energy Commission does not view PUC section 399.12.5 as being "stranded." Nor does it believe that the former law, which allowed POUs to implement voluntary RPS programs under former PUC section 387, should take precedence over the existing law in PUC section 399.12.5. Had the Legislature wanted to repeal or amend the existing provisions of PUC section 399.12.5, it could have done so in any of the various amendments to section 399.12.5 made in 2008, 2009, and 2010, or when it amended the RPS statute under SBX1-2.

Changes in Law Under Assembly Bill 809

PUC section 399.12.5 was enacted in 2007 under Assembly Bill 809[7] and took effect January 1, 2008. Subdivision (b) of section 399.12.5 established a new RPS eligibility category for incremental electricity generation resulting from efficiency improvements to hydroelectric facilities regardless of size. To qualify under this new RPS eligibility category, subdivision (b)(3) required as follows:

> (3) The hydroelectric generation facility was operational prior to January 1, 2007, the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not the result of routine maintenance activities, as determined by the Energy Commission, and the efficiency improvements were not included in any resource plan sponsored by the facility owner prior to January 1, 2008.
> (Pub. Util. Code sec. 399.12.5, subd. (b)(3).)

Legislative history for AB 809 indicates that the intent of the bill was to encourage prospective improvements that make more efficient use of existing hydroelectric resources and are environmentally benign. This intent is reflected in the bill analysis of several legislative committees. For example, the bill analysis of the Assembly Utilities and Commerce Committee for AB 809, as amended July 17, 2007, indicates "The purpose of AB 809 is to encourage efficiency gains at existing hydroelectric facilities that do not result in additional impoundments or

[7] AB 809 (Stats. 2007, ch. 684, sec. 3), effective January 1, 2008.

diversion of water."[8] The bill analysis of the Office of Senate Floor Analyses for this same version of AB 809 refers to arguments in support of the bill by Southern California Edison Company that the "efficiency improvements should not result in increased environmental impacts," and also refers to arguments in opposition to the bill by the Planning and Conservation League which state:

> "PCL strongly supports energy efficiency for existing facilities. However, many energy producers are already planning to increase energy efficiencies for existing facilities, including hydropower, as a response to the current energy market. These improvements are part of a smart business plan and are likely to occur without further encouragement. California's RPS program was established to promote generation of new renewable energy resources. The RPS program was not designed to simply reward actions that would have occurred without the program."
> (Office of Senate Floor Analyses, analysis of AB 809 as amended July 17, 2007, pg. 2.)

The provisions enacted under AB 809 guard against the concerns raised by the Planning and Conservation League by ensuring the efficiency improvements qualify for RPS eligibility only if those improvements were planned and initiated after AB 809 took effect on January 1, 2008.

PUC section 399.12.5 was subsequently amended in 2008, 2009 and 2010, by Assembly Bill 3048[9], Assembly Bill 1351[10] and Senate Bill 1247[11], respectively. However, none of the amendments made by these bills changed the eligibility requirements in section 399.12.5 (b) for the improvements to be initiated on or after January 1, 2008, and not be included in a resource plan sponsored by the facility owner prior to this date.[12] These requirements have remained the same since the law was enacted in 2007 under AB 809; providing strong support that the January 1, 2008, date is intended to be a firm requirement in the law.

The Energy Commission adopted revisions to it RPS Guidebook to implement AB 809 in December 2007. These revisions to the RPS Guidebook included the requirements from PUC section 399.12.5 (b)(3) that the efficiency improvements be initiated on or after January 1, 2008,

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[8] Assembly Utilities and Commerce Committee analysis of AB 809, as amended July 17, 2007, pg. 1.
[9] AB 3048 (Stats. 2008, ch. 558, sec. 21), effective January 1, 2009.
[10] AB 1351 (Stats. 2009, ch. 525, sec. 1), effective January 1, 2010.
[11] SB 1247 (Stats. 2010, ch. 488, sec. 1), effective September 29, 2010.
[12] Although not pertinent to this discussion, the amendments made by AB 3048 changed the eligibility criteria in PUC section 399.12.5 (b)(4) to allow efficiency improvements that result from the financial commitments of POUs to qualify under the criteria of section 399.12.5 (b). Prior to AB 3048, only the efficiency improvements that result from the financial commitments of "retail sellers" could qualify under the criteria of section 399.12.5 (b). The amendments made by AB 1351 changed the eligibility criteria in PUC section 399.12.5 (b)(2) to allow hydroelectric facilities located outside of California to be certified pursuant to Section 401 of the federal Clean Water Act by the applicable state board or agency or by a regional board with delegated authority. AB 1351 also amended the eligibility criteria in PUC section 399.12.5 (b)(3) to require the hydroelectric facility to be owned by a retail seller or POU. Prior to AB 1351, hydroelectric facilities were required to be certified by the State Water Resources Control Board pursuant to Section 401 of the federal Clean Water Act or to be otherwise exempt from such certification. SB 1247 amended section 399.12.5 to clarify that a new or repowered hydroelectric facility that is RPS eligible as of January 1, 2010, will not lose its eligibility if it causes a change in the volume or timing of streamflow, if those changes are required by license conditions approved, pursuant to the Federal Power Act, on or after January 1, 2010. SB 1247 also amended PUC section 399.12.5 (b)(2) to establish an alternative method for satisfying the certification requirements under Section 401 of the federal Clean Water Act for the Rock Creek Powerhouse hydroelectric facility.

and not be included in any resource plan sponsored by the facility owner before January 1, 2008.[13]

Failure to Update Cross References in PUC Section 399.12.5 Was an Oversight

It appears the Legislature merely failed to update the cross reference to subdivision (c) of PUC section 399.12 in the law that pre-dated SBX1-2. This oversight is similar to other drafting errors made in SBX1-2. For example, the Legislature failed to change the date in the law for the Energy Commission's adoption of regulations specifying enforcement procedures for the RPS for POUs. As enacted by SBX1-2, PUC section 399.30 (n)[14] directed the Energy Commission to adopt regulations for this purpose on or before July 1, 2011. However, SBX1-2 did not take effect until more than 5 months later on December 10, 2011.[15] Similarly, SBX1-2 directed the Energy Commission to study and provide a report to the Legislature by June 30, 2011, on the analysis of the run-of-river hydroelectric generation facilities in British Columbia and whether these facilities are or should be eligible for California's RPS. (PRC section 25740.5.)

SBX1-2 amended various provisions of California's RPS statute. The Legislature updated cross references in the statute to the extent SBX1-2 amended language in a particular code section of the law. For example, SBX1-2 amended PUC section 399.12, so the Legislature updated the cross reference in section 399.12 (h) to the Energy Commission's authority to implement an RPS accounting system. Prior to SBX1-2, the Energy Commission's authority for this purpose was specified in PUC section 399.13. But since SBX1-2 re-codified this authority in PUC section 399.25, the Legislature updated the cross reference in PUC section 399.12 (h) to section 399.25 as part of the amendments made by SBX1-2.

Drafting errors related to cross references are not uncommon. In fact, the Legislature failed to update the cross reference in subdivision (l) of PUC section 399.30 when the law was amended by AB 2227. As amended by AB 2227, PUC section 399.30 (l) currently provides as follows:

(l) On or before July 1, 2011, the Energy Commission shall adopt regulations specifying procedures for enforcement of this article. The regulations shall include a public process under which the Energy Commission may issue a notice of violation and correction against a local publicly owned electric utility for failure to comply with this article, and **for referral of violations to the State Air Resources Board for penalties pursuant to subdivision (o).**
(Pub. Util. Code sec. 399.30, subd. (l). Emphasis added.)

Subdivision (l) includes a cross reference to subdivision (o) when referring to penalties that may be assessed by the State Air Resources Board for violations of the RPS statute. Prior to AB

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[13] The *Renewables Portfolio Standard Eligibility Guidebook, Third Edition*, adopted on December 19, 2007, lists the eligibility requirements for incremental generation from efficiency improvements to hydroelectric facilities in Section II.B.3.c, which provides as follows:
"The incremental increase in generation that results from efficiency improvements to a hydroelectric facility, regardless of the electrical output of the facility, is eligible for the RPS if ALL of the following conditions are met:
1. The facility was operational before January 1, 2007.
2. The efficiency improvements are initiated on or after January 1, 2008, are not the result of routine maintenance activities, and were not included in any resource plan sponsored by the facility owner before January 1, 2008.
[...]"

[14] Subdivision (n) of Public Utilities Code section 399.30 was later renumbered subdivision (m) due to amendments under Assembly Bill (AB) 2227 (Stats. 2012, ch. 606, sec. 8)

[15] SBX1-2 became effective on December 10, 2011, in accordance with Government Code section 9600 (a).

2227, these penalty provisions were included in subdivision (o). Under AB 2227, subdivision (o) was renumbered subdivision (m). Subdivision (o) no longer exists in current law, but is still cross referenced in subdivision (l) of PUC section 399.30. This drafting error does not indicate legislative intent to alter the application of subdivision (l). A fair reading of the law still requires the provisions of subdivision (l) to be applied as originally enacted, with penalties being assessed by the State Air Resources Board pursuant to the penalty provisions of subdivision (m), notwithstanding the outdated cross reference to subdivision (o).

Likewise, a fair reading of PUC section 399.12.5 requires the provisions of this section to be applied as currently exist, notwithstanding the now outdated cross reference to subdivision (c) of PUC section 399.12.

Unit Improvements Satisfy Legislative Goals of PUC Section 399.11

LADWP argues that the improvements to the Castaic Power Plant should be considered RPS eligible, because these improvements support the legislative goals of the RPS as expressed in PUC section 399.11. Specifically, LADWP argues that the improvements will increase capacity and the additional generation will displace consumption of energy generated from fossil fuel; the reduction of fossil fuel generation will in turn result in reductions of air pollution and greenhouse gas emissions; and the energy produced by the improvements at the Castaic Power Plant will promote stable and predictable electric service and contribute to the safe and reliable operation of the electric grid. (LADWP petition, pg. 13.)

The test for determining the RPS eligibility of the Castaic Power Plant is not whether the plant's improvements support the legislative goals, but whether those improvements satisfy the requirements of PUC section 399.12.5. The legislative goals must be considered in light of the statutory requirements in the law. Arguably, generation from large hydroelectric facilities[16] and excluded new small hydroelectric facilities[17] may further the legislative goals of the RPS, but these resources are not considered "eligible renewable energy resources" for purposes of the RPS.

Staff's Delays Prevented LADWP From Purchasing RECs During First Compliance Period

LADWP argues that delays in processing its application for certification of the Castaic Power Plant should be considered in determining the RPS eligibility of the plant, because these delays prevented LADWP from procuring additional resources to meets is RPS procurement obligations. (LADWP petition, pg. 13.) The delays in processing an application for certification cannot serve as a basis for challenging staff's denial of RPS certification. As explained above, to challenge staff's denial of certification it must be shown that staff misapplied the eligibility criteria and factor in the *RPS Guidebook, 6th Edition*, or applied criteria and factors other than those found in the *RPS Guidebook, 6th Edition*, in denying certification.

[16] In general, Public Utilities Code section 399.12 (e)(1) limits RPS eligibility to hydroelectric facilities that are 30 MW or less in capacity. Limited exceptions are established under Public Utilities Code section 399.12 (e)(1)(A) for hydroelectric generation units with a capacity not exceeding 40 MW that are operated as part of a water supply or conveyance systems, and under Public Utilities Code section 399.12.5 for incremental generation from qualifying efficiency improvements to large hydroelectric facilities.

[17] Under Public Utilities Code section 399.12 (e)(1)(A), a new hydroelectric facility that commences operations after December 31, 2005, is not an eligible renewable energy resource for the RPS if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

The *RPS Guidebook, 6th Edition*, clearly describes the RPS eligibility requirements for incremental generation from efficiency improvements to large hydroelectric facilities. The *RPS Guidebook, 6th Edition*, states that the efficiency improvements cannot be initiated prior to January 1, 2008, and cannot be included as part of a resource plan sponsored by the facility owner prior to this date. These requirements have not changed since the Energy Commission first adopted revisions to the RPS Guidebook in December 2007 to implement the eligibility category for incremental generation from efficiency improvements pursuant to AB 809.[18] Therefore, LADWP should not have been surprised by staff's determination that the efficiency improvements to the Castaic Power Plant were ineligible for the RPS to the extent such improvements were initiated prior to January 1, 2008 or included in a resource plan sponsored by LADWP prior to this date.

It is worth noting that when LADWP amended its RPS policy in April 2008 to expand the list of eligible renewable resources for its RPS program, it specifically referenced the Energy Commission's revisions to the RPS Guidebook in December 2007,[19] but did not accept all of the eligibility requirements in this Guidebook for its treatment of incremental generation from efficiency improvements to hydroelectric facilities. As amended, LADWP's RPS policy stated:

> "The hydroelectric incremental increase in generation that results from efficiency improvements to hydroelectric facilities are RPS eligible if such improvements were initiated on or after January 1, 2008."
> (LADWP petition – attachments – *LADWP Board Approval Letter, April 30, 2008*, pg. 2.)

LADWP's amended RPS policy did not include other eligibility requirements from the RPS Guidebook for this category of resource, such as the requirements that the efficiency improvements not be the result of routine maintenance activities or that the efficiency improvements not be included in any resource plan sponsored by the facility owner before January 1, 2008.

Based on LADWP's RPS policy, as stated above, it is questionable whether the incremental generation from improvements to Unit 5 of the Castaic Power Plant would have qualified under LADWP's RPS policy, since according to LADWP's petition for reconsideration, the improvements to Unit 5 were "initiated in October 2007." (LADWP petition, pg. 5.)

LADWP also argues that the Energy Commission's regulations to implement SBX1-2 were adopted more "than two years late" and that this delay severely prejudiced LADWP. (LADWP petition, pg.14.) While it is true that the regulations were adopted more than two years after the adoption date specified in SBX1-2 -- July 1, 2011[20] -- it is unfair to suggest the regulations were more than two years late. As explained above, SBX1-2 did not take effect until December 10, 2011. This is more than 5 months after the July 1, 2011, adoption date specified in SBX1-2. It

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[18] The eligibility category for incremental generation from efficiency improvements to hydroelectric facilities regardless of size was first addressed in the *Renewables Portfolio Standard Eligibility Guidebook, Third Edition*, adopted on December 19, 2007.

[19] *LADWP Board Approval Letter, dated April 30, 2008*, indicates the Energy Commission updated its Renewables Portfolio Standard Eligibility Guidebook in "January, 2008," rather than in December 2007. (LADWP petition – attachments – *LADWP Board Approval Letter, April 30, 2008*, pg. 2.)

[20] Public Utilities Code section 399.30 (m) states that "On or before July 1, 2011, the Energy Commission shall adopt regulations specifying procedures for enforcement of this article..."

was legally impossible for the Energy Commission to adopt regulations by the July 1, 2011 date, since the Energy Commission did not have authority to adopt these regulations until after the law took effect on December 10, 2011. Moreover, the July 1, 2011 date does not recognize the time the Energy Commission needed to hold various public workshops and hearings, solicit public input and comments, and coordinate with the state's various POUs to develop, finalize and adopt the required regulations.

Lastly, LADWP argues that the Energy Commission is treating POUs differently than investor owned utilities (IOUs) with respect to resources procured by POUs and IOUs prior to SBX1-2. This is not correct. The Energy Commission is treating POUs the same as IOUs and is applying the RPS eligibility requirements of PUC section 399.12.5 to LADWP in the same manner it is applying these requirements to IOUs and other retail sellers of electricity.