

Los Angeles



Department of Water & Power

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July 11, 2014

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California Energy Commission

**DOCKETED**

**02-REN-1038**

TN 73432

JUL 11 2014

California Energy Commission

**DOCKETED**

**11-RPS-01**

TN 73431

JUL 11 2014

Re: Reconsideration of Order by the California Energy Commission (CEC or Energy Commission) on the Los Angeles Department of Water and Power's (LADWP's) Applications for Renewables Portfolio Standard (RPS) Certification for the Castaic Power Plant, Units 3 and 5, RPS ID No. 62561A

Dear Messrs.' Weisenmiller and Levy:

This request for reconsideration is provided to the CEC to have the CEC reconsider its order on dismissing the Letter of Appeal filed by LADWP. This request for reconsideration of the order signed by the Chair of the CEC is authorized under Public Resources Code Section 25530

Procedural Background

LADWP applied for certification of Units 3 and 5 of the Castaic Power Plant on September 6, 2012. On January 14, 2014, the CEC staff issued a letter stating that Units 3 and 5 were ineligible for certification for the category of "Incremental Hydroelectric Generation from Efficiency Improvements Regardless of Facility Output." LADWP filed a petition for reconsideration to the Executive Director of the CEC on February 13, 2014. On April 10, 2014, the CEC's Executive Director denied LADWP's petition for reconsideration. LADWP filed its Letter of Appeal with the CEC on May 9, 2014. On June 12, 2014, the Chair of the CEC signed an "Order Dismissing Letter of Appeal," which dismissed, without prejudice, LADWP's Letter of Appeal.

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### Discussion

#### 1. Equitable Remedy is Not Available Under 1231, 1237, or Guidebooks, but is Needed to Cover a Gap in Due Process

LADWP filed its Letter of Appeal availing itself, in part, of an administrative process identified by the CEC. However, the remedy sought by LADWP is neither afforded directly by the CEC's identified administrative process, nor directly under Title 20, Sections 1231 or 1237 of the California Code of Regulations. Rather, the Letter of Appeal was a request to the CEC to apply equitable principles of fairness in the face of a lack of rules and process to cover the situation where the CEC staff provided a response to LADWP's applications after the conclusion of the First Compliance Period.<sup>1</sup>

Reiterating the arguments presented in LADWP's Letter of Appeal, dated May 9, 2014:

1. There is no process to address the delay in time it took for the CEC staff to review and respond to LADWP's applications for grandfathered resources;
2. There is no process to purchase Renewable Energy Credits and apply them retroactively to remedy a delayed response from the CEC, which prejudices LADWP to meet its compliance requirements for the first compliance period; and
3. There is no CEC process for the specific certification of grandfathered resources provided by PUC Section 399.12(e)(1)(C).

The impact of this lack of procedure is that LADWP cannot mitigate any decision by the CEC for any of the grandfathered resources it has sought to certify, especially since the negative decision has come after the conclusion of the First Compliance Period. This lack of process retroactively abrogates the public authority, commitment, and investments made by LADWP on behalf of its ratepayers at the Castaic Power Plant. It wholly severs decisions made by the Los Angeles Board of Water and Power Commissioners and elected officials at the Los Angeles City Council as early as 2008 without any process afforded members of the public in the City of Los Angeles.

#### 2. LADWP's Compliance with the RPS is Currently at Issue

The CEC's order is based in part on a statement that "LADWP's compliance with the RPS is not currently at issue."<sup>2</sup> This is not true. The CEC promulgated a series of regulations that directly applied to public owned electric utilities (POUs) for submitting compliance forms and assessing compliance with the RPS Program.<sup>3</sup> Along with other POUs, the CEC required LADWP to compile its data and submit its compliance report

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<sup>1</sup> The First Compliance Period is from January 1, 2011 to December 31, 2013. PUC §399.30 (b) and (c)(1).

<sup>2</sup> CEC's "Order Dismissing Letter of Appeal" issued to LADWP, dated June 12, 2014, Page 2.

<sup>3</sup> See 20 CCR §§ 3200 to 3208, and CEC's RPS Eligibility Guidebook, Seventh Edition

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for the First Compliance Period by July 1, 2014<sup>4</sup> for its RPS. Therefore, LADWP's compliance with the RPS is currently at issue. The CEC should reconsider its order.

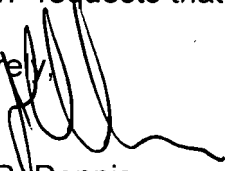
As a governmental agency, LADWP understands when there are a lack of resources and lack of staffing coupled with new requirements and applications to implement a new program, such as the demands the California Renewable Energy Resources Act (SBX1-2) has placed on the CEC. However, LADWP should not suffer because, with the passage of SBX1-2, the Legislature has not commensurately provided adequate resources to the CEC to administer its programs. LADWP does appreciate the CEC's offer to LADWP to re-apply for certification of Unit 3 at the Castaic Power Plant. With the CEC Resolution No. 140422-11, there is at least some form of construct to apply for an extension of time for a re-application. However, this is an as of yet to be determined process.

Rather, the CEC should reconsider its order and provide:

1. A process specifically for the certification of grandfathered resources found in the Public Utilities Commission (PUC) Section 399.12(e)(1)(C);
2. Address the delay in time it took for the CEC staff to review and respond to LADWP's applications for grandfathered resources by allowing LADWP to purchase Renewable Energy Credits and apply them retroactively.

LADWP requests that the CEC reconsider its order, dated June 12, 2014.

Sincerely,



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and Chief Compliance Officer – Power System  
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Enclosures:

1. CEC letter of RPS ineligibility, dated January 14, 2014
2. LADWP Petition for Reconsideration, dated February 13, 2014
3. CEC Denial letter from Executive Director, dated April 10, 2014
4. LADWP Letter of Appeal, dated May 9, 2014
5. CEC Order Dismissing Letter of Appeal, dated June 12, 2014

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<sup>4</sup> 20 CCR § 3207(d).