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Filer:	Pjoy Chua
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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSOIN

In the Matter of:)	Docket No. 16-RPS-02
)	
Appeal by LADWP re)	RE: CEC June 14, 2016 Business Meeting
RPS Certification Eligibility)	
)	
)	

THE LOS ANGELES DEPARTMENT OF WATER AND POWER'S COMMENTS RE
ITEM 2.A OF THE CALIFORNIA ENERGY COMMISSION'S AGENDA FOR THE
JUNE 14, 2016 BUSINESS MEETING

June 10, 2016

LOUIS C. TING
Director of Power Planning & Development
Los Angeles Dept. of Water and Power
111 N. Hope Street, Suite 921
Los Angeles, CA 90012
Tel: (213) 367 – 0239
Email: Louis.Ting@ladwp.com

FELIX LEBRON
Deputy City Attorney
Los Angeles Dept. of Water and Power
111 N. Hope Street, Suite 340
Los Angeles, CA 90012
Telephone Number: (213) 367-4625
Email: Felix.Lebon@ladwp.com

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ITEM 2.A OF THE CALIFORNIA ENERGY COMMISSION’S AGENDA FOR THE
JUNE 14, 2016 BUSINESS MEETING

The Los Angeles Department of Water and Power (“LADWP”) submits the following comments on Agenda Item 2.a of the California Energy Commission’s (“CEC” or “Commission”) Agenda for the June 14, 2016 Business Meeting – LADWP Letter of Appeal Re: RPS Certification – pursuant to Section 1104 (e) of Title 20 of the California Code of Regulations. 20 C.C.R. § 1104(e).

I. INTRODUCTION

The City of Los Angeles (“City”) and LADWP have been strong supporters of the State’s RPS goals from the outset. The State passed Senate Bill (“SB”) 1078 in 2002, and the City quickly adopted a voluntary RPS program consistent with Public Utilities Code Section 387, which vested the governing boards of local publicly-owned utilities (“POUs”) with the responsibility for implementing and enforcing a RPS program that recognized the Legislature’s intent to encourage the development and procurement of renewable-energy resources. The City and LADWP’s Board of Water and Power Commissioners (“LADWP’s Board”) retained

discretion over the procurement and selection of eligible renewable resources. LADWP embarked on an early and aggressive effort to procure and develop renewable resources. As a staunch supporter of the State's RPS goals, the City and LADWP invested over \$1 billion in its RPS program in reliance on the then-existing laws.

SB X1-2 ("SBX1-2") became effective on December 10, 2011 – nearly one year into Compliance Period One ("CP1") – and created new and mandatory RPS requirements applicable to POU's. LADWP's transition from a locally-controlled RPS program to a mandatory program has been challenging because voluntary RPS programs under Section 387 did not require POU's to certify their renewable resources under the CEC's RPS Guidebook standards or report generation data through the CEC's tracking system or WREGIS. Over the past five years, LADWP has worked closely with the CEC's RPS Staff ("RPS Staff") to transition LADWP's RPS procurement under SBX1-2. These joint efforts resulted in a successful transition of most, but not all, of LADWP's renewable resources. Despite these diligent efforts, there are a few legacy resources procured under LADWP's voluntary RPS program several years before SBX1-2 was passed, which have not been certified by the RPS Staff or afforded RPS credit for CP1.

The Commission serves an important role in ensuring that the State's RPS is implemented in a manner that is consistent with the State's statutes and environmental policies. The Commission will be asked to resolve important questions of law and policy in this proceeding on issues relating to statutory interpretation and legislative intent to grandfather and credit POU's' legacy resources into the RPS under SBX1-2 and subsequent legislation, such as Assembly Bill (AB) 2196. LADWP fully supports the Commission's appointment of a subcommittee to consider the evidence and legal arguments that are necessary for the

Commission to make an informed decision in a manner that affords due process and is consistent with the State's RPS statutes, policies, and expressed legislative intent.

II. SPECIFIC COMMENTS

A. Agenda Item 2.a(1) – LADWP's 2009 Biomethane Appeal

LADWP's pending appeal in Agenda Item 2.a(1) relates to the certification and crediting of generation from the use of renewable biomethane procured under contracts LADWP executed in 2009 ("Biomethane Appeal"). On January 21, 2016, LADWP filed its Biomethane Appeal with the CEC, and shortly thereafter LADWP requested that the Commission issue a stay on the appeal to provide additional time for LADWP and the RPS Staff to pursue a resolution of the dispute. The Commission stayed the appeal until April 29, 2016 to accommodate these additional discussions between LADWP and the RPS Staff.

Over the course of the stay, LADWP provided additional information and evidence to, and conducted numerous conference calls with, the RPS Staff to address the questions and concerns regarding the 2009 biomethane procurement that were raised by the RPS Staff. The discussions between LADWP and the RPS Staff were productive, but the parties ultimately reached an impasse. Nonetheless, these extensive efforts to resolve the dispute should help narrow the scope of disputed issues that the Commission will ultimately address in this proceeding. The Commission should know that the RPS Staff worked diligently and collaboratively with LADWP in the effort to resolve the dispute. LADWP appreciates and commends the RPS Staff and the CEC's Executive Director for their dedicated efforts and hard work.

B. Agenda Item 2.a(2) – Subsequent LADWP Appeals, Motions, or Requests Seeking Action by the Full Commission

LADWP supports the Commission’s appointment of a subcommittee to resolve additional RPS-related motions or requests by LADWP. The Proposed Order for Agenda Item 2.a(2) provides that the appointed committee “is authorized to and may hear and act on any subsequent RPS certification eligibility appeals, motions, or requests filed by LADWP seeking action by the full Commission.” LADWP seeks clarification from the Commission regarding the scope of the Proposed Order. Specifically, LADWP wants to ensure the scope covers a subsequent motion that LADWP would like to file with the appointed subcommittee.

LADWP and the RPS Staff have been engaged in ongoing discussions relating to LADWP’s renewable resources and procurement. On January 19, 2016, LADWP submitted to the RPS Staff an extensive memorandum addressing, among other things, the statutory interpretation of SBX1-2 relating to the grandfathering provisions for LADWP’s legacy resources. SBX1-2 enacted prospective legislation that became effective during the middle of CP1. The Legislature, therefore, determined that POUs’ renewable resources procured under voluntary RPS programs would be grandfathered into the RPS, and generation from these resources would count-in-full toward POUs’ RPS requirements. The CEC’s certification standards, however, have been interpreted and administered in a manner that applies standards retroactively, which is inconsistent with the statute and rules of statutory construction.

On June 3, 2016, the RPS Staff responded to LADWP’s January 19, 2016 memorandum, making clear that the parties are still at an impasse on these statutory-interpretation issues. These questions are now ripe for resolution and should be adjudicated before the assigned subcommittee for the Biomethane Appeal.

The Commission's resolution of these statutory questions will impact LADWP's legacy resources generally, and are particularly important for resolving issues relating to LADWP's procurement from British Columbia ("BC") small-hydro facilities. In 2007, LADWP entered into two procurement contracts for the purchase of renewable energy from BC small-hydro generating facilities less than 30 MWs, which were eligible renewable resources under LADWP's then-existing RPS policy. These contracts expired in December 2011. LADWP did not own these small-hydro facilities and did not seek RPS certification of the facilities because the contracts expired, and there was no requirement for POUs to certify resources before SBX1-2 became effective.

LADWP reported 437,379 RECs for the renewable energy procured under these two small-hydro contracts from the energy generated from the period of January 1, 2011 until December 10, 2011 – SBX1-2's effective date. On January 15, 2014 – after the close of CP1 – the CEC issued the report Analyzing British Columbia Run-Of-River Facilities for the California Renewables Portfolio Standard Commission Final Report (B.C. Run-of-River Report), which noted that BC small-hydro facilities should not be eligible for the RPS. The CEC deemed these RECs ineligible because the facilities were not RPS-certified, which is – in effect – an improper retroactive application of SBX1-2.

LADWP raises these issues here for the limited purpose of clarifying the scope of the Proposed Order. LADWP would like to request that the assigned subcommittee consider a motion by LADWP requesting that these statutory-interpretation questions be addressed in the administrative proceeding, including as applied to LADWP's BC small-hydro procurement. The Proposed Order's scope could be narrowly construed not to cover this request if the motion is not technically related to a "certification" issue, even though the issue addresses the

“eligibility” of the BC-hydro procurement for RPS credit for the period of time before SBX1-2 took effect.

The resolution of these questions in the same administrative proceeding will promote efficiency because of the common legal questions of statutory interpretation that will be raised in the Biomethane Appeal. LADWP’s alternative would be to file a motion with the full Commission for a possible referral to a subcommittee, which would delay the matter until a subsequent CEC business meeting. LADWP appreciates the Commission’s consideration on this request for clarification, which is intended to facilitate an efficient and expedient resolution of these issues and conserve the resources of the Commission and the parties.

III. CONCLUSION

The City and LADWP’s customers have made substantial investments to increase the use of renewable energy over the past decade, and LADWP is working hard to ensure that those investments receive the full-credit it deserves. LADWP views itself in partnership with the CEC and knows that continued collaboration is necessary for achieving the successful implementation of the State’s RPS goals, particularly given the State’s latest mandates under SB 350. LADWP thanks the RPS Staff and the Commission for their continued efforts to resolve these issues.

Dated: June 10, 2016

Respectfully submitted,

/s/ Louis C. Ting

LOUIS C. TING

Director of Power Planning & Development

Los Angeles Dept. of Water and Power

111 N. Hope Street, Suite 921

Los Angeles, CA 90012

Tel: (213) 367-0239

Email: Louis.Ting@ladwp.com