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Memorandum

To: LADWP Appeal Committee
Robert Weisenmiller, Chair and Presiding Member
David Hochschild, Commissioner and Associate Member
Paul Kramer, Hearing Officer

Date : July 8, 2016
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Subject: **Appeal by LADWP re RPS Certification or Eligibility (Docket No. 16-RPS-02)**

California Energy Commission Staff Pre-Hearing Status Report

California Energy Commission Staff (CEC Staff or Staff) respectfully submits this pre-hearing status report in response to the LADWP Appeal Committee's (Committee) *Notice of Committee Status Conference* (Status Conference Notice) issued by the Committee on June 28, 2016. The Status Conference Notice directs the parties to file status reports addressing, at a minimum, the following four topics:

1. Whether principles of equity or any laws would prevent or prohibit the Committee and the Commission from exercising its broad authority under Public Resources Code sections 25218 and 25218.5 to consider all of the arguments presented in LADWP's Letter of Appeal dated January 21, 2016, including any arguments that might not be within the scope of appeals under the Renewables Portfolio Standard (RPS) Eligibility Guidebook, which provides that "[a]ppeals will be considered ...only upon a showing that factors other than those described in the RPS Guidebook were applied by the Energy Commission in denying or revoking RPS Certification."
2. Each specific area of dispute between LADWP and CEC Staff and the nature of the dispute.
3. A proposed schedule for this proceeding including additional Committee Status Conferences, hearings, and pre- and/or post-hearing briefings.
4. LADWP is requested to describe any additional certification or eligibility appeals, motions, or requests that it currently expects to present to the Committee with estimated filing and review timeframes.

Each of these topics is addressed below.

I. BACKGROUND

This proceeding was initiated to consider issues raised in a January 21, 2016 Letter of Appeal filed by the Los Angeles Department of Water and Power (LADWP). This letter of appeal was in response to the denial of LADWP's Petition for Reconsideration of Applications for RPS Certification for the Scattergood, Harbor, Valley, and Haynes generating facilities based on the use of biomethane from contracts signed in 2009 with Shell Energy North America, L.P. and Atmos Energy Marketing, LLC. The following is a brief overview of events.¹

On or about July 27, 2009 and August 20, 2009 respectively, LADWP signed contracts with Shell Energy North America, L.P. (Shell) and Atmos Energy Marketing, LLC (Atmos) to procure biomethane to be used at LADWP's Scattergood, Harbor, Valley, and Haynes facilities as part of LADWP's efforts to meet renewable energy targets. On December 15, 2010, the California Energy Commission (CEC or Energy Commission) adopted the *RPS Eligibility Guidebook, Fourth Edition*.

On April 12, 2011, SBX1-2 was signed into law expanding the California Renewables Portfolio Standard program to include publicly owned electric utilities (POUs). A few months later, on July 8, 2011, CEC received pre-certification applications from LADWP for the subject facilities based on the use of biomethane procured under the 2009 Shell and Atmos contracts. On October 17, 2011, CEC received certification applications from LADWP for the subject facilities based on the use of biomethane procured under the 2009 Shell and Atmos contracts. Energy Commission staff evaluated this application using the *RPS Eligibility Guidebook, Fourth Edition* because the *RPS Eligibility Guidebook, Fourth Edition* was in effect when LADWP's applications were submitted. At this time, the RPS program rules explicitly required Energy Commission staff to evaluate applications based on the RPS Eligibility Guidebook in place at the time the application was submitted. The rules also required that "the RPS-certified facility, or biomethane supplier, must enter into contracts for the delivery or storage of the gas with every pipeline or storage facility operator transporting or storing the gas from the injection point to California... (p. 27)."²

As a result of this requirement, Commission staff required all applicants applying for RPS certification of biomethane being injected into a common carrier pipeline to provide documentation that contracts were entered into for the delivery or storage of the gas along the entire transportation pathway from point of injection to California. All other applicants who applied for certification of facilities using biomethane injected into a common carrier pipeline were unable to meet this delivery pathway requirement.

Upon receiving LADWP's pre-certification application for the subject facilities using biomethane from the 2009 contracts, Energy Commission staff notified LADWP of its concern that LADWP could not meet the delivery contract requirements of the *RPS Eligibility Guidebook, Fourth Edition*. Recognizing it was

¹ A more detailed description of events is available in the November 30, 2015 Staff Memorandum that accompanied the December 22, 2015 denial of LADWP's Petition for Reconsideration dated December 22, 2015. The discussion of pertinent facts is included in the "Background" section on pages 2-8 of the Staff Memorandum. The Committee should include both Staff's response and the Executive Director's denial letter as part of the record for the subject proceeding.

not able to meet the requirement, in November 2011, LADWP asked the Energy Commission to disregard the 2009 Shell and Atmos contracts originally submitted with LADWP's July 2011 applications.

On December 2, 2011, the Energy Commission pre-certified the four generation facilities as RPS eligible based on the use of biomethane procured under LADWP's 2011 contract with Shell, which was executed on or about December 20, 2011.

In response to Legislative concerns that the RPS eligibility for biomethane established under SBX1-2 may not provide direct environmental benefits to California, the Energy Commission suspended its biomethane eligibility rules on March 28, 2012 under Resolution 12-0328-3, placing a moratorium on certifying biomethane facilities. Legislative concerns culminated in the adoption of Assembly Bill 2196 (Stat. 2012, Ch. 605), which was signed into law September 27, 2012 to clarify the RPS eligibility of biomethane in light of SBX1-2 and to establish new RPS eligibility requirements for biomethane. Among other things, AB 2196 grandfathered the procurement of electricity from generating facilities using biomethane delivered through a common carrier pipeline under the rules in place at the time the biomethane procurement contract was executed, including the *RPS Eligibility Guidebook, Fourth Edition*, subject to additional requirements specified in AB 2196.³

In order to implement the requirements of AB 2196, and to concurrently lift the suspension of its RPS eligibility rules for biomethane, staff adopted the next version of the Guidebook, *RPS Eligibility Guidebook, Seventh Edition*, on April 30, 2013. The Seventh Edition established new biomethane rules consistent with AB 2196 and required all applicants of electrical generation facilities using biomethane that were already RPS-certified or had applied for certification prior to the suspension to submit additional information in order to maintain or establish RPS eligibility under the new biomethane rules.

On July 19, 2013, LADWP submitted a set of certification forms to amend its certification of the subject facilities based on biomethane procured under 2009 Shell and Atmos contracts.

On February 28, 2014, Energy Commission staff notified LADWP that its applications to amend its certification of the subject facilities based on biomethane procured under 2009 Shell and Atmos contracts were denied.

In response to this denial, LADWP submitted a Petition for Reconsideration on March 28, 2014 challenging staff's denial of the amended RPS certification of the subject facilities based on the use of biomethane procured under contracts executed in 2009 with Shell and Atmos. CEC staff continued to engage in good faith discussions with LADWP staff. Ultimately, however, the Executive Director denied LADWP's Petition for Reconsideration in a December 22, 2015 letter. This letter explained that LADWP must demonstrate that it satisfied the requirements specified in the RPS Guidebook, Fourth Edition, Section II.B.2, which "clarified the delivery requirements for pipeline methane." CEC staff believed the contract delivery requirement as articulated in the Fourth Edition had always been a program

² RPS Eligibility Guidebook, Fourth Edition. Page 27

³ The Fifth and Sixth Editions of the RPS Eligibility Guidebook were adopted during the Moratorium and have no bearing on biomethane eligibility issues.

requirement. Indeed, every applicant for electrical generation facilities using biomethane—including under the *RPS Eligibility Guidebook, Third Edition*—has been required to demonstrate they meet the contract delivery requirement.

On January 21, 2016, LADWP filed a Letter of Appeal to the Chair of the Energy Commission for the denial of LADWP’s Petition for Reconsideration. In its Letter of Appeal, LADWP outlined several main arguments as to why the subject facilities should be certified for the California RPS program. These arguments are enumerated and discussed in the next section.

In correspondence between staff and LADWP following the January 2016 Letter of Appeal, LADWP introduced an argument that was not included in the Letter of Appeal. LADWP argued in email correspondence that AB 2196 requires that the Energy Commission apply the Third Edition Guidebook, not the Fourth Edition. As discussed further below in section II.5, CEC staff believes LADWP raises an interesting issue that merits further consideration and would benefit from the attention of the Committee.

II. SCOPE OF ISSUES: BIOMETHANE CERTIFICATION

The Committee has requested each party to address any principles of equity or any laws that would prevent or prohibit the Committee from considering all arguments presented in the Letter of Appeal, including any arguments that might not be within the scope of the what the *RPS Eligibility Guidebook, Eighth Edition* states is appropriate for appeal consideration.⁴ The Committee also requests a description of each specific area of dispute between LADWP and staff and the nature of the dispute.⁵ Both of these requests are addressed below for each of the main arguments LADWP raises in its Letter of Appeal, and in several additional arguments raised by LADWP outside of its Letter of Appeal.

In its Letter of Appeal, LADWP outlines several main arguments in favor of California RPS certification for the subject facilities. It also has subsequently introduced an additional argument, as discussed in section II.5 below.

- 1) **LADWP argues that CEC staff “applies criteria and factors other than those found in the *RPS Eligibility Guidebook, Fourth Edition*”⁶ and applied the Fourth Edition inconsistently.** Energy Commission staff maintains that it has applied the requirements expressly stated in the *RPS Eligibility Guidebook, Fourth Edition* in a consistent and uniform manner. Staff has applied these requirements to LADWP in the same manner it has applied the requirements to other applicants seeking RPS certification based on the use biomethane delivered through injection into the natural gas pipeline system. Staff believes it has not required of LADWP anything beyond what is clearly stated in the *RPS Eligibility Guidebook, Fourth Edition*. The *RPS Eligibility Guidebook*,

⁴ The *RPS Eligibility Guidebook, Eighth Edition* states that “appeals will be considered...only upon a showing that factors other than those described in the RPS Guidebook were applied by the Energy Commission in denying or revoking RPS Certification.”

⁵ Status Conference Notice states “For disputes regarding interpretation and application of law (including statutory construction issues), identify the particular regulations and statutes at issue as well as the applicable RPS Eligibility Guidebook.”

⁶ Letter of Appeal, page 3.

Fourth Edition states that contracts for the delivery and storage of biomethane from the point of injection to California is required. Among other requirements, the *RPS Eligibility Guidebook, Fourth Edition* requires that in order to be RPS eligible:

“...2. The biomethane must be injected into a natural gas pipeline system that is either within the WECC region or interconnected to a natural gas pipeline system located in the WECC region that delivers gas into California (or delivers to the electric generation facility if the electric generation facility is located outside California) and the gas is delivered as specified below...3. The applicant, or authorized party, **must enter into contracts for the delivery (firm or interruptible) or storage of the gas with every pipeline or storage facility operator transporting or storing the gas from the injection point to California** (or to the electric generation facility if the electric generation facility is located outside of California). Delivery contracts with the pipeline operators may be for delivery with or against the physical flow of the gas in the pipeline.”⁷ [emphasis added]

Staff believes it is appropriate for the Committee to consider this evidence in evaluating LADWP’s argument.

- 2) **LADWP argues that the *RPS Guidebook, Fourth Edition* requirement for a “contract delivery pathway” is “arbitrary and incorrect,” and is inconsistent with: “the Schlesinger Report;” Air Resources Board requirements relating to Mandatory Reporting Requirement for Greenhouse Gas Emissions; federal standards under the Natural Gas Act; and federal public policy. Staff believes considering this issue before the Committee raises issues of equity and is not appropriate for Committee consideration.**

These arguments raised by LADWP deal with the merit of the contract delivery pathway requirement stated in the *RPS Eligibility Guidebook*. This is a fundamental program requirement under the *RPS Eligibility Guidebook, Fourth Edition*.

Staff believes this argument is not appropriate for Committee consideration as part of this proceeding as it raises potential violations of principles of equity. LADWP is requesting a remedy in its appeal that would involve changing the Commission’s adopted requirements for biomethane delivery. Essentially, LADWP is asking that the Commission to disregard its adopted RPS requirements and establish new requirements that LADWP can meet. The requirements at issue were developed through a public process involving the release of draft language, a workshop to solicit and receive public comments, including stakeholder input, the issuance of revised draft language, and after balancing and consideration of all issues, adoption by the Energy Commission, followed by planning and compliance by all other applicants that have sought and obtained RPS certification based on these requirements. LADWP did not submit

⁷ RPS Eligibility Guidebook, Fourth Edition, pp. 20-21.

comments to the Commission during the process to adopt requirements for biomethane under the Fourth Edition of the *RPS Eligibility Guidebook*.

Specific dates regarding the adoption of the *RPS Eligibility Guidebook, Fourth Edition*, are as follows. On or around August 23, 2010 a draft *RPS Eligibility Guidebook, Fourth Edition* was first released by Energy Commission staff. Staff conducted a workshop open to the public on the draft *RPS Eligibility Guidebook, Fourth Edition* on or about August 30, 2010 and accepted comments at the workshop as well as written comment up until on or around November 26, 2010. On December 15, 2010 the *RPS Eligibility Guidebook, Fourth Edition* was adopted. During this process Energy Commission staff received, considered, and addressed or responded to 36 comments from various members of the public and/or stakeholders. LADWP had the opportunity to comment on the draft *RPS Eligibility Guidebook, Fourth Edition* before it was adopted and raise the issues it has raised in its appeal. However, LADWP did not. LADWP attended the Energy Commission staff workshop on or about August 30, 2010, but did not provide any comments at the workshop. LADWP also did not submit any written comments to the draft *RPS Eligibility Guidebook, Fourth Edition* during the public process.

If LADWP had presented its concerns with the *RPS Eligibility Guidebook, Fourth Edition* during the public process it would have presented Energy Commission staff, along with interested parties, an opportunity to consider and address or respond to LADWP's concerns. If the Committee were to consider LADWP's request to change the RPS requirements at this time within the appeal proceeding because LADWP is not satisfied with the RPS requirements at issue it would not be fair to the interested parties and Energy Commission staff who have already participated in an extensive public process regarding the RPS requirements. Nor would it be fair to the applicants that have already sought and obtained RPS certification based on the Commission's adopted RPS requirements, or to those entities that may have sought certification but for the adopted RPS requirements. Changing the RPS requirements after the fact to accommodate one applicant is not appropriate.

In summary, staff believes that if the Committee decides to re-considering the fundamental merit of the RPS program requirement that was arrived at during a robust public process, it will create an unfair situation to those stakeholders who have already participated in an extensive public process or to those applicants that have already followed the program requirements.

3) LADWP argues it “had transportation agreements in place that met CEC requirements” under the RPS Guidebook, Fourth Edition.

In its Letter of Appeal, LADWP states “the CEC denied certification of LADWP's 2009 Shell and Atmos Contracts because LADWP did not have a contract for firm or interruptible delivery of the gas. LADWP did have firm transportation agreements with Kern River Gas Transmission Company (KRT) used for delivery of the biomethane gas procured under the 2009 Shell and

Atmos contracts.”⁸ LADWP states that these transportation agreements with KRT satisfy the requirement of the *RPS Eligibility Guidebook, Fourth Edition*.

Based on the information LADWP provided in its Letter of Appeal, staff acknowledged that LADWP had two transportation agreements with Kern River Gas Transmission Company entered into on May 28, 2013, and originally executed on April 2, 1990 and May 21, 2001, under agreement contract numbers 1006 and 1706, respectively. However, staff does not agree that these transportation agreements alone are sufficient to satisfy the contract delivery requirement of the *RPS Eligibility Guidebook, Fourth Edition*. According to Restated Firm Transportation Service Agreements Contract Number 1006, a total of 110,853 Dth was to be received by KRT from various points along the Kern River Pipeline, with the farthest point located at Opal-WFS (a pipeline receipt point in Opal, Wyoming), to two delivery points within California. This agreement provides a contracted delivery pathway from Opal, Wyoming into California, but does not provide delivery services for the biomethane for all the segments of the pipeline from the points of injection of the biomethane procured from the 2009 contracts to that point at Opal. Similarly, contract number 1706 indicates KRT transported 39,000 Dth from Opal-WFS (a pipeline receipt point in Opal, Wyoming), to a delivery point in Southern California. Again, this agreement does not provide delivery services for the biomethane for all the segments of the pipeline from the points of injection of the biomethane procured under the 2009 contracts to that point at Opal. For example, under LADWP’s 2009 Atmos contract, gas is being injected from Carter Valley Landfill located in Church Hill, Tennessee. The transportation agreements under contract numbers 1006 and 1706 do not provide delivery for gas from Church Hill, Tennessee to Opal, Wyoming.

Staff finds no prohibition on consideration of this argument by the Committee.

4) LADWP argues its “2009 Shell and Atmos contracts are grandfathered resources.”

In their Letter of Appeal, LADWP states:

“LADWP had no obligation to certify its biomethane agreements with the CEC under its 2008 Policy. Therefore, the CEC should count all the RECs up to the point in time of the effective date of SBX1-2, December 10, 2011. In addition under the grandfathering provision of SBX1-2, the CEC should certify the 2009 Shell and Atmos Contracts.”⁹

Energy Commission staff does not agree with this statutory interpretation of SBX1-2. For more detail on the nature of this disagreement, see Section III.

Staff finds no prohibition on consideration of this argument by the Committee.

⁸ Page 13. Letter of Appeal.

⁹ Letter of Appeal, p. 14.

- 5) **After LADWP filed its Letter of Appeal, LADWP raised questions for the first time as to which RPS Eligibility Guidebook—the Third or the Fourth Edition—should apply to their 2009 contracts, and what should be required under each.**

Staff believe this issue warrants careful scrutiny by the Committee because the Committee's decision may make the other biomethane issues moot. Staff believes the Committee should determine whether AB 2196 interpretation regarding if the Third or Fourth Edition should apply to LADWP's 2009 contracts under AB 2196. If the Committee decides the Fourth Edition applies to LADWP's 2009 contracts, staff believe the appeal should be denied. If the Committee decides the Third Edition applies, then it must decide A) if LADWP should meet the contract delivery requirement as Energy Commission staff required of applicants under the Third Edition (and deny the appeal), or B) if they should not be required to, given the lack of explicit language in the *RPS Eligibility Guidebook, Third Edition*, and grant the appeal making the biomethane procured under LADWP's 2009 contracts RPS-eligible.

Statutory Interpretation of AB 2196

Following the Letter of Appeal filed by LADWP on January 21, 2016, LADWP requested several Stays of the Appeal to allow for considerable communication between LADWP and Energy Commission staff in an attempt to dissolve the disagreement. In an April 2016 correspondence to CEC staff and legal representatives, LADWP argued that according to Assembly Bill 2196, the *RPS Guidebook, Third Edition* should apply to the subject facilities and further, the Third Edition does not state a contract delivery pathway requirement. The section of AB 2196 that LADWP refers to in making this argument is found in Public Utilities Code 399.12.6(a)(1):

“Any procurement of biomethane delivered through a common carrier pipeline under a contract executed by a retail seller or local publicly owned electric utility and reported to the Energy Commission prior to March 29, 2012, and otherwise eligible under the rules in place as of the date of contract execution shall count toward the procurement requirements established in this article, under the rules in place at the time the contract was executed, **including the Fourth Edition of the Energy Commission's RPS Eligibility Guidebook**, provided that those rules shall apply only to sources that are producing biomethane and injecting it into a common carrier pipeline on or before April 1, 2014.”¹⁰ (Emphasis added.)

The rules in place at the time LADWP's Shell and Atmos contracts were executed (July 27, 2009 and August 20, 2009, respectively) was the *RPS Eligibility Guidebook, Third Edition* (effective December 2007 to December 2010). LADWP believes this language should control. However, this interpretation would appear to give no meaning to the bolded language above that suggests the rules in the Fourth Edition Guidebook should apply. Staff believes the statutory interpretation of this clause is appropriate for Committee review.

¹⁰ Public Utilities Code 399.12.6(a)(1)

Requirements under the Third and Fourth Edition

As noted previously, the Fourth Edition Guidebook explicitly states that contracts for delivery or storage of gas with every pipeline transporting the gas from the injection point to California are required:

“The biomethane must be injected into a natural gas pipeline system that is either within the WECC region or interconnected to a natural gas pipeline system located in the WECC region that delivers gas into California (or delivers to the electric generation facility if the electric generation facility is located outside California) and the gas is delivered as specified below...The applicant, or authorized party, must enter into contracts for the delivery (firm or interruptible) or storage of the gas with every pipeline or storage facility operator transporting or storing the gas from the injection point to California (or to the electric generation facility if the electric generation facility is located outside of California). Delivery contracts with the pipeline operators may be for delivery with or against the physical flow of the gas in the pipeline.”¹¹

The Third Edition Guidebook does not contain identical language. In terms of language regarding delivery requirements, it states:

“RPS-eligible biogas (gas derived from RPS-eligible fuel such as biomass or digester gas) injected into a natural gas transportation pipeline system and **delivered into California for use in** an RPS-certified multi-fuel facility may result in the generation of RPS-eligible electricity.”¹² [emphasis added]

In addition, the certification forms required of applicants under the Third Edition require the applicant to attest that “The gas must be used at a point within the WECC region, into a pipeline that **delivers gas into California.**” [emphasis added]

Staff Interpretation of Guidebook Language

Since as early as March 2007 when biogas was first eligible under the RPS, Commission staff interpreted the guidebook requirement that pipeline gas be “delivered into California for use in an RPS-certified multi-use-fuel facility”¹³ to mean that all applicants were required to provide contracts for the delivery of the gas from point of injection all the way to California. Staff required the delivery requirements in response to the fuel “use” provisions of then Public Resources Code section 25741(b)(1).¹⁴

¹¹ RPS Eligibility Guidebook, Fourth Edition, pp. 20-21.

¹² RPS Eligibility Guidebook, Third Edition. Page 20.

¹³ *RPS Eligibility Guidebook, Second Edition*. p. 22.

¹⁴ These fuel “use” provisions are now addressed in Public Resources Code section 25741(a)(1). This provision defines an “in-state renewable electricity generation facility” for purposes of the RPS to mean a “facility that meets all the following criteria: (1) The facility uses biomass...”¹⁴ As explained in detail in the 2015 Staff Memo accompanying the denial of LADWP’s Petition for Reconsideration, the only way an electricity generation facility

In June 2009, the Energy Commission received a request from Cambrian Energy Management, LLC, one of LADWP's gas suppliers, to clarify the delivery requirements for biomethane. The Commission provided a response that reinforced staff's interpretation in a September 22, 2009 letter from the Energy Commission Executive Director, Melissa Jones, to Evan William of Cambrian Energy management LLC.¹⁵

As a result, under the Third Edition all applicants were required to meet the delivery contract requirement. In a May 2012 letter to all RPS participants (who were verified under both the Third and Fourth Editions), we requested "*copies of contracts for the delivery and storage of the biomethane...with every pipeline or storage facility operator that transported or stored the gas from the injection point to California.*" All three parties—including one publicly owned electric utility—that certified facilities under the Third Edition provided this information.

While the language in the Third Edition does not explicitly state a delivery contract pathway was required as the Fourth Edition does, staff interpreted the "use" provision as such, and required it of all applicants.

III. SCOPE OF ISSUES: OTHER CERTIFICATION DISPUTES

In its written public comment submitted in response to Item 2.A of the June 14, 2016 Business Meeting agenda item, LADWP requested that any committee appointed in response to the appeal also resolve "additional RPS-related motions or requests by LADWP," including "the statutory interpretation of Senate Bill x1-2 relating to grandfathering provisions for LADWP's legacy resources."

In its January 19, 2016 Memorandum from LADWP to the Energy Commission, LADWP argues that SBX1-2 grandfathered in all renewable resources that were procured by publicly owned electric utilities as part of their own program pursuant to then PUC Section 387, and as such "the Legislature mandated that the CEC certify the renewable resources adopted under Section 387 pursuant to a grandfather clause."

Staff do not agree. Staff believes SBX1-2 did not intend to grandfather *all* resources any POU deemed eligible by its own definition—but rather only those resources that met the requirements listed in PRC Section 25741. In order to confirm these requirements in PRC Section 25741, the Energy Commission must certify the resource.

could actually use biogas transported through the natural gas transportation pipeline system is if the biogas was delivered (or had the potential to be delivered) into California for use at the facility.

¹⁵ From the letter: "According to the Renewables Portfolio Standard Eligibility Guidebook, Third Edition, biogas injected into a natural gas transportation pipeline must be "delivered into California for use in an RPS-certified multi-fuel facility"1 to result in the facility's generation being considered as RPS eligible electricity. Consequently, there must be a physical contract path from the injection facility to a point within the state of California." A copy of this letter can be found as an attachment to the Staff Memo accompanying the December 2015 Denial of LADWP's Petition for Reconsideration.

The SBX1-2 grandfathering provision is PUC 399.12(e)(c) which states:

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

In the case of generation that comes from hydro dams located in British Columbia, statute requires the Energy Commission to examine if this generation meets all the requirements in PRC section 25741, including the requirement that:

“ (3) If the facility is outside the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state....”¹⁶

The Energy Commission is unable to verify that this requirement, along with all the other requirements of PRC section 25741 without POUs certifying their facilities.

In a letter dated June 3, 2016 from Energy Commission to LADWP, Energy Commission staff explained to LADWP that the RECs they were claiming from unspecified facilities referred to as “BC Hydro” were found ineligible because LADWP had never applied to the Energy Commission for RPS certification. From the letter: “POUs were given ample opportunity to certify facilities for the RPS from which they wished to claim RECs beginning on January 1, 2011. The POU grace period for submitting certification applications for these facilities was initially October 1, 2012, but was later extended to December 31, 2013.¹⁷ As a result, LADWP missed the grace period deadline to apply for certification of the BC Hydro facilities to count RECs from these facilities for CP1.”

Staff believes the Committee should determine whether SBX1-2 grandfathers this resource, as LADWP asserts, or not.

IV. EXPERT WITNESSES

The Energy Commission would like to reserve the right to offer expert witness testimony depending on the scope of the proceedings as established by the Committee. If issues relating to biomethane pipeline delivery are at issue it is possible the Energy Commission could offer expert testimony regarding applicable aspects of natural gas pipeline system in the United States.

¹⁶ PRC section 25741(a)(3)

¹⁷ The Energy Commission established the initial POU grace period in the *RPS Eligibility Guidebook, Fifth Edition*, which was adopted in May 2012 to implement SBx1-2. Due to the time constraints on the first compliance period, a POU Grace Period was established to allow POUs to count generation from facilities beginning on January 1, 2011, if they applied for RPS certification before October 1, 2012. This POU Grace Period deadline was later extended by the Energy Commission to December 31, 2013, in the 7th Edition RPS Eligibility Guidebook.

V. RECORD FOR THE PROPOSED

Staff requests that the Committee identify all documents included as part of record for the proceeding, so the parties may request, as appropriate, the inclusion of other pertinent documents.

VI. PROPOSED SCHEDULE FOR PROCEEDING

Staff requests that the Committee issue a Committee Order detailing the scope of the legal and factual issues to be considered as part of the proceeding. hearing. The issuance of such an order would allow the parties to meet and confer to determine which if any legal and factual issues may be stipulated to avoid evidentiary hearings and/or legal briefs. It would also facilitate the establishment of a tentative schedule that would provide the Committee and the parties ample time to address all of the issues. Staff proposes the following schedule for the proceeding:

	ACTIVITY	DATE	COMMENT
1	LADWP files Letter of Appeal	January 21, 2016	
2	California Energy Commission Order Establishing Committee	June 14, 2016	
3	Status Report	July 8, 2016	
4	Committee Status Conference	July 13, 2016	
5	Committee Order to identify scope and nature of individual issues to be heard	TBD	
6	Meet and Confer	1 week from Committee Order	Opportunity for parties to agree to items not in dispute.
7	Status Report	5 days from Meet and Confer	
8	Motion(s), Petition(s), Request(s) filed by LADWP	TBD	
9	Prehearing Conference	TBD	
10	Hearing(s) on any Motion(s), Petition(s), Request(s) filed by LADWP.	TBD	The number and scheduling of hearings will depend on what motions, petitions, request, etc. are filed by LADWP.
11	Presiding Members Proposed Decision(s) on any Motion(s), Petition(s), Request(s) filed by LADWP	TBD	Committee will determine.
12	Hearing on Proposed Decision(s)	TBD	
13	Revised Proposed Decision (if necessary)	TBD	Committee will determine.
14	Energy Commission Final Decision(s) on any Motion(s), Petition(s), Request(s) filed by LADWP.	TBD	Committee will determine.
15	Prehearing Conference	TBD	
16	Evidentiary Hearing(s)		The number and scheduling of hearings will depend on the scope of the proceedings as determined by the Committee.
17	Presiding Members Proposed Decision	TBD	Committee will determine.
18	Hearing on Proposed Decision	TBD	Committee will determine.
19	Revised Proposed Decision (if necessary)	TBD	Committee will determine.
20	Energy Commission Final Decision	TBD	Committee will determine.