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

In the Matter of:)	Docket No. 16-RPS-02
)	
Appeal by LADWP re)	RE: LADWP's Motion to Add and
RPS Certification or Eligibility)	Consolidate Additional RPS-Eligibility
)	Claims In 16-RPS-02 for Resolution by the
)	CEC

THE LOS ANGELES DEPARTMENT OF WATER AND POWER'S MOTION TO ADD
AND CONSOLIDATE ADDITIONAL RPS-ELIGIBILITY CLAIMS IN 16-RPS-02 FOR
RESOLUTION BY THE CALIFORNIA ENERGY COMMISSION

July 22, 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) 367-4500
Email: Felix.Lebon@ladwp.com

JEAN-CLAUDE BERTET
Deputy City Attorney
Los Angeles Dept. of Water and Power
111 N. Hope Street, Suite 340
Los Angeles, CA 90012
Telephone Number: (213) 367-4500
Email: Jean-Claude.Bertet@ladwp.com

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The Los Angeles Department of Water and Power ("LADWP") submits the following Motion to include additional Renewable Portfolio Standard ("RPS") eligibility claims in this proceeding for an adjudication on the merits by the Committee and the California Energy Commission ("Commission" or "CEC"), and requesting that Committee consolidate the additional RPS-eligibility claims for hearing with the biomethane issue raised in LADWP's Letter of Appeal currently pending before the Committee (the "Motion"). This Motion is filed in accordance with the Commission's June 14, 2016 Order Establishing Committee (Order No. 16-0614-2a) and pursuant to California Code of Regulations ("C.C.R"), title 20, sections 1203 and 1211.5.

This Motion requests that the Committee issue an order that: **(1)** adds LADWP's claims regarding the RPS eligibility of LADWP's British Columbia small-hydroelectric procurement under contracts executed in 2007 that expired in December 2011("BC Hydro") into administrative proceeding 16-RPS-02; **(2)** consolidates the BC Hydro claims and the existing

biomethane claims currently pending before the Committee in 16-RPS-02 for an adjudication on the merits of these disputes by the Committee and Commission; and (3) sets a hearing and briefing schedule for the parties to address the substantive merits of LADWP's BC Hydro claims.

The Motion arises from the dispute between LADWP and the CEC's RPS Staff ("Staff") regarding the interpretation of Senate Bill X1-2 ("SBX1-2") and the statutory provisions that grandfather and count in full for the RPS the renewable energy and resources procured under LADWP's voluntary RPS program. LADWP requests that the Committee and Commission resolve the substantive questions regarding Staff's interpretation and implementation of SBX1-2, including as applied by Staff to LADWP's BC Hydro procurement claims for the RPS Compliance Period from January 1, 2011 to December 31, 2013 ("CP1"). This Motion is also made on the grounds that LADWP's BC Hydro claims raise common questions of law and fact with the biomethane claims currently pending before the Committee in 16-RPS-02, and the Committee's consolidation of the BC Hydro claims into this proceeding will promote efficiency and avoid unnecessary delay and costs from adjudicating this dispute in a separate proceeding. Staff and LADWP agree that the Committee should consider and adjudicate the merits of LADWP's BC Hydro claims in this proceeding.

The Motion is based on the points and authorities addressed below, the Declaration of Louis C. Ting and the evidence filed concurrently therewith, and any additional arguments or evidence that the Committee may consider during the hearing, if any, on this Motion.

I. INTRODUCTION

The City of Los Angeles ("City") through LADWP invested over \$1 billion in support of California's RPS as an early and staunch supporter of the RPS. Staff and LADWP have reached

an impasse regarding the interpretation of the statutory provisions under SBX1-2 that grandfather and provide full RPS credit to LADWP's renewable resources and energy procured under LADWP's voluntary RPS program. Staff has determined that certain renewable energy generated from LADWP's grandfathered resources should be deemed ineligible for RPS credit for CP1, including LADWP's procurement of renewable energy from BC Hydro facilities. LADWP requests that the Committee consider whether LADWP's BC Hydro procurement is eligible for RPS credit under SBX1-2 and related RPS statutes.

The Commission has clear authority to consider and adjudicate this dispute under the Public Resources Code and the Commission's regulations. LADWP reported 437,379 renewable energy credits ("RECs") in its RPS procurement report for CP1 for renewable energy procured from the generation of electricity from the BC Hydro facilities in 2011. Therefore, the Commission will have to consider the RPS eligibility of LADWP's BC Hydro procurement when assessing LADWP's RPS-procurement standards for CP1.

Moreover, LADWP's Letter of Appeal – currently pending before the Committee – addresses questions of law and fact regarding the interpretation of SBX1-2 and the grandfathering of LADWP's biomethane procurement. LADWP's BC Hydro claims raise similar common questions of law and fact regarding SBX1-2, LADWP's voluntary RPS program under former Public Utilities Code Section 387, and the standard for determining the eligibility of LADWP's grandfathered renewable resources for RPS credit in CP1. The Committee's addition of LADWP's BC Hydro claims to this proceeding will, therefore, promote efficiency and conserve the Committee's and parties' resources. The Committee's consolidation of the BC Hydro claims into the existing proceeding will also avoid unnecessary delay and additional costs

that would result from adjudicating these common questions of law and fact in separate proceedings.

Moreover, this issue is ripe for adjudication. Staff agrees that the Committee should consider and address LADWP's BC Hydro claims in this adjudicative proceeding. Therefore, the Motion is *unopposed* insofar as both parties agree that the Committee should consider and resolve LADWP's BC Hydro claims. Accordingly, the Committee should add and consolidate LADWP's BC Hydro claims into this proceeding for the Committee's and Commission's adjudication on the merits.

II. ARGUMENT

A. Legal Standard

The Commission's June 14, 2016 Order Establishing Committee states that the "Committee shall have the authority and duties necessary to conduct this proceeding as set forth in Energy Commission regulations, including the authority of a presiding member to manage the proceeding in accordance with California Code of Regulations, title 20, section 1203. The Committee is authorized to and may hear and act on any subsequent RPS certification or eligibility appeals, motions, or requests filed by LADWP seeking action by the full Commission." *See* Order No. 16-0614-2a, Docket No. 16-RPS-02.

Section 1203(c) provides that the presiding member shall have the power to "[r]egulate the conduct of the proceedings and hearings, including, but not limited to, disposing of procedural requests, *ordering the consolidation* or severance of any part, or all, of any proceeding or hearing, admitting or excluding evidence, *designating the subject matter*, scope, time of presentation, and order of appearance of persons making oral comments or testimony, accepting stipulations of law or fact, and continuing the hearings." 20 C.C.R. § 1203(c); *see also* 20 C.C.R. § 1210 ("in an adjudicative proceeding the presiding member may regulate the

proceedings, and any parts thereof, in any manner that complies with the Administrative Adjudication Bill of Rights....”).

Section 1211.5(a) states, in relevant part, that “[a]ny party may request the presiding member or, where applicable, the commission, to *issue orders* or rulings, including but not limited to... *requests for adjudication of procedural or substantive issues*.” 20 C.C.R. § 1211.5(a).

B. The Committee Has Authority to Add LADWP’s BC Hydro Claims into this Proceeding.

LADWP requests that the Committee issue an order adding LADWP’s BC Hydro claims into this proceeding for an adjudication of the statutory-interpretation questions under SBX1-2 and a determination of whether LADWP’s BC Hydro procurement should receive RPS credit in CP1. The Committee has the authority to consider LADWP’s request for an adjudication of the statutory-interpretation questions regarding SBX1-2 and the eligibility of LADWP’s BC Hydro procurement for RPS credit.

Public Resources Code Section 25218(e) states “[i]n addition to other powers specified in this division, the commission may do any of the following: Adopt any rule or regulation, *or take any action*, it deems reasonable and necessary to carry out this division.” Section 25218.5, in turn, states “[t]he provisions specifying *any power or duty of the commission shall be liberally construed*, in order to carry out the objectives of this division.” The “division” refers to Division 15 of the Public Resources Code, which includes the Commission’s Renewable Energy Resources Program in Chapter 8.6 (Pub. Res. Code §§ 25740 *et seq.*), and the Commission’s related duties under the California Renewable Energy Resources Act (Pub. Util. Code §§ 399.11 *et seq.*) enacted under SBX1-2 and related RPS-legislation.

Moreover, the Commission has a *paramount* duty to ensure that SBX1-2 is interpreted and implemented in a manner that is consistent with the statutory provisions and expressed legislative intent. *See Morris v. Williams*, 67 Cal.2d 733, 748 (1967); *Assoc. for Retarded Citizens v. Dep’t of Dev. Servs.*, 38 Cal.3d 384, 391 (1985); *E.g.*, Gov. Code §§ 11342.1-11342.2. Principles of equity and due process warrant the Committee’s and Commission’s full consideration of the merits in this proceeding. The City through LADWP invested over \$1 billion in its RPS program in reliance on the then-existing laws, and LADWP deserves a full and fair opportunity to address – and have the Committee and Commission consider – the merits of LADWP’s BC Hydro claims in this proceeding.

C. LADWP’s BC Hydro Claims Raise Common Questions of Law and Fact with the Letter of Appeal Currently Pending before the Committee.

The California Code of Civil Procedure (“C.C.P.”) provides guidance for the Committee regarding the standard for determining when disputes should be consolidated for a joint hearing. C.C.P. Section 1048(a) states “[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all of the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary cost or delay.” C.C.P. § 1048(a). As discussed below, LADWP’s BC Hydro claims and the biomethane claims currently pending before the Committee establish the existence of common questions of law and fact.

1. LADWP’s Voluntary RPS Program under SB 1078 and PUC Section 387

California Senate Bill 1078 (“SB 1078”) established the RPS, which took effect on January 1, 2003. SB 1078 added, among other provisions, Sections 387 to the Public Utilities Code. Section 387(a) provided that “[e]ach governing body of a local publicly owned electric utility [“POU”], as defined in Section 9604, shall be responsible for implementing and enforcing

a renewables portfolio standard that recognizes the intent of the legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.”

SB 1078 also added Section 399.13 to the Public Utilities Code, which provided that the CEC would “certify eligible renewable energy resources that it determines meet the criteria described in subdivision (a) of Section 399.12” and “design and implement an accounting system to verify compliance with the renewable portfolio standard *by retail sellers....*” Section 387 did not require POUs to certify their renewable resources under the CEC’s RPS Eligibility Guidebook standards or report RPS-generation data to the CEC using the CEC’s tracking system for RECs. Declaration of Louis C. Ting in 16-RPS-02 dated July 22, 2016 (“Ting Decl.”) ¶ 23, Ex. 20 (CEC Consultant Report: *The Progress of California’s Publicly Owned Utilities in Implementing Renewables Portfolio Standard*, CEC-300-2008-005 (Dec. 2008)) at 6, fn 6 (“Although some POUs certify their renewable facilities as RPS-eligible under Energy Commission guidelines, POUs are not required to certify their facilities with the Energy Commission and, in most case, do not.”); *see id.* at 10 (“State law provides the governing board of each POU with the authority to determine the resource eligibility rules under its RPS program.”).

The City and LADWP’s Board adopted a voluntary RPS program and policy consistent with the legislative goals identified in Public Utilities Code Section 387. Ting Decl. ¶¶ 4-7. Exs. 01-04. On June 29, 2004, the Los Angeles City Council (City Council) passed Resolution 03-2064-S1 requesting that LADWP’s Board adopt an official RPS Policy. *Id.* It set a goal to achieve 20 percent renewable energy by 2017. *Id.*

LADWP's Board adopted a RPS Policy consistent with SB 1078 that established the goal of increasing the amount of energy LADWP generated from renewable energy resources to 20 percent of its energy sales to retail customers by 2017, with an interim goal of 13 percent by 2010. Ting Decl. ¶¶ 4-9, Exs. 1-6. On June 29, 2005, the City Council approved the LADWP RPS Policy ("2005 RPS Policy"). Ting Decl. ¶ 9, Ex. 06 ("2005 RPS Policy"). The 2005 RPS Policy included electricity generated by small hydroelectric facilities of 30MWs or less as one of the eligible renewable resources. *Id.*

On March 6, 2007, pursuant to its 2005 RPS Policy then in effect, LADWP's Board approved by Resolution No. 007-166, LADWP's Power Purchase Agreements with Powerex (Agreement Nos. BP 05-020A and BP 05-020B) for the purchase of renewable energy from small hydroelectric generating facilities with a nameplate ratings of 30 MWs or less. Ting Decl. ¶¶ 14-16, Exs. 11-13. On March 23, 2007, the Los Angeles City Council approved the BC-Hydro PPAs by Ordinance No. 178533. Ting Decl. ¶¶ 17-20, Exs. 14-17; Ting Decl. ¶¶ 21-22, Exs. 18-19 (Power Purchase Agreement Nos. BP 05-020-A and BP 05-020-B collective the "BC Hydro PPAs").

The BC-Hydro PPAs required Powerex to provide electricity from small-hydro facilities less than 30 MWs. Ting Decl. ¶¶ 21-22, Exs. 18-19 at § 1.1 (definition of "Facilities"). Powerex provided representations and attestations confirming that the delivered energy met the renewable requirements. *See also id.* at §§ 4.8, 5.1, 5.3, 5.4, 8.1, 8.3-8.4. The "Point of Delivery" under the Powerex PPAs is expressly identified as the Nevada-Oregon Border (NOB), at the point where LADWP's and Bonneville Power Authority's electric system meet on LADWP's Pacific Intertie DC Transmission Line. *Id.* §1.1 (definitions of Point of Delivery and NOB). The Point of Delivery was located within the Western Electricity Coordinating Council ("WECC"). *Id.* The

BC-Hydro PPAs had a contract term of four years and nine months. *Id.* § 3.1 (Effective Date and Term). The BC-Hydro PPAs expired on December 31, 2011. *Id.*

2. POUs' RPS Requirements under SBX1-2 and Public Utilities Code Section 399.30

SBX1-2 became effective on December 10, 2011. SBX1-2 added Section 399.30 to the Public Utilities Code, which established new RPS requirements applicable to POUs. Section 399.30 required that LADWP's governing board adopt RPS procurement requirements and a program for enforcement.

On December 6, 2011, LADWP's Board adopted Resolution No. 012-109, which updated LADWP's RPS policy to comply with SBX1-2 ("2011 RPS Policy"). Ting Decl. ¶12, Ex. 09 ("2011 RPS Policy"). Section 4 of the 2011 RPS Policy provides that "all renewable energy resources approved by the Board as part of its renewable portfolio in accordance with applicable law and previous versions of this RPS Policy, including without limitation those in Appendix A, will continue to be eligible renewable energy resources. These renewable energy resources will count in full towards LADWP's RPS targets adopted in Section 3 under this updated RPS Policy." *Id.* Appendix A, in turn, identifies LADWP's grandfathered resources procured under LADWP's voluntary RPS program pursuant to Section 387. *Id.*

Public Utilities Code Section 399.30(c)(3) further provides that "a local publicly owned electric utility shall adopt procurement requirements consistent with Section 399.16." Section 399.16(d)(1), in turn, provides that "any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full toward the procurement requirements" where the "renewable energy resource was eligible under the rules in place as of the date when the contract was executed." Consistent with Section 399.30(c)(3), LADWP adopted procurement requirements consistent with Section 399.16. Specifically, Section 7 of LADWP's 2011 RPS

Policy states “[s]ubject to the provisions of PUC Section 399.16(d), renewable electricity products procured prior to June 1, 2010, are exempt from these portfolio content categories and will continue to count in full toward LADWP’s RPS compliance targets.” Ting Decl. ¶12, Ex. 09.

SBX1-2 also amended the definition of “eligible renewable resource” contained in Public Utilities Code Section 399.12. As amended, “Eligible renewable energy resource” was defined as:

an electrical generating facility that meets the definition of a ‘renewable electrical generating facility’ in Section 25741 of the Public Resources Code, subject to the following: ... (C) A facility approved by the governing board of a local publicly owned electric utility prior to June 1, 2010, for procurement to satisfy the renewable energy procurement obligations adopted pursuant to the 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. (Pub. Util. Code § 399.12(e)(1)(C)).

SBX1-2 also added a new Section 25641.5 to the Public Resources Code. Section 25641.5 required the CEC to study and provide a report to the Legislature by June 30, 2011, that analyzed BC Hydro facilities and whether those facilities should be included as renewable electrical generating facilities. The CEC did not meet the prescribed June 30, 2011 deadline.

- On February 24, 2012, the CEC first conducted a staff “workshop to discuss a study to analyze British Columbia Run-of-River Hydroelectric projects and consider whether these projects are, or should be, eligible renewable electrical generation facilities for California’s [RPS].” *See* Ting Decl. ¶ 24, Ex. 21.
- On March 22, 2013, the CEC conducted a staff “workshop to discuss the draft study to analyze British Columbia Run-of River Hydroelectric projects and whether these projects are, or should be, eligible renewable electrical generation facilities for

California's [RPS].” See Ting Decl. ¶ 25, Ex. 22. The draft report did not determine whether BC hydro facilities are or should be RPS eligible.

- On January 15, 2014, the CEC adopted the report *Analyzing British Columbia Run-Of-River Facilities for the California Renewables Portfolio Standard Commission Final Report* (“CEC BC Hydro Report”). See Ting Decl. ¶ 27, Ex. 24. The BC Hydro Report noted that BC run-of-river facilities should not be eligible for the RPS.

LADWP's BC-Hydro PPAs terminated on December 31, 2011, less than three weeks after the effective date of SBX1-2. See Ting Decl. ¶¶ 21-22, Exs. 18-19. LADWP did not own the BC Hydro facilities and did not seek RPS certification of the facilities because the BC Hydro PPAs expired. POUs had no obligation to certify resources with the CEC before SBX1-2 became effective. LADWP reported 437,379 RECs for the renewable energy procured under these BC Hydro PPAs covering the electricity generated from the period of January 1, 2011 until December 10, 2011 – SBX1-2's effective date. Ting Decl. ¶ 3. SBX1-2 requested that the CEC study the RPS-eligibility of BC Hydro, but did not deem BC hydro facilities ineligible when SBX1-2 took effect on December 11, 2011. The Commission did not adopt the CEC BC Hydro Report until *after the close of CPI* on January 15, 2014. See Ting Decl. ¶ 27, Ex. 24. LADWP's BC-Hydro PPAs were, however, eligible under the rules in place when LADWP executed the BC-Hydro PPAs in 2007. LADWP reported RECs generated from the BC-Hydro PPAs from January 1, 2011 to December 10, 2011 as part of LADWP's conscientious effort to remain in harmony with California rulemaking and in light of the CEC BC Hydro Report adopted on January 15, 2014.

3. Common Questions of Law and Fact

LADWP's BC Hydro claims raise common questions of law and fact with the biomethane claims currently pending before the Committee. LADWP's B.C. Hydro and

biomethane claims both raise legal questions regarding the statutory interpretation of SBX1-2 and the legal standards applicable to LADWP's grandfathered resources. In addition, these claims raise common questions regarding whether Staff's interpretation and implementation of SBX1-2 has resulted in an improper retroactive application of standards that did not exist for POUs before SBX1-2's effective date.

LADWP's BC Hydro and biomethane claims also raise common factual questions regarding LADWP's voluntary RPS Policy and the whether LADWP's procurement of renewable energy from its grandfathered resources are eligible for RPS credit. In addition, both claims require the Committee's consideration and interpretation of SB 1078, SBX1-2, Public Utilities Code sections 387, 399.12, 399.16, 399.25 and 399.30, and Public Resources Code section 25741. Accordingly, consolidating these claims in this proceeding would promote efficiency and avoid unnecessary delay and costs in resolving these issues in separate adjudicative proceedings. *See* C.C.P. § 1048(a).

D. LADWP's BC Hydro Claims Are Ripe for the Resolution by the Commission.

LADWP and Staff *agree* that the Committee should consider and resolve the statutory-interpretation issues and the RPS-eligibility of LADWP's BC Hydro procurement in this proceeding. Staff's July 8, 2016 Pre-Hearing Status Report stated that "Staff believes the Committee should determine whether SBX1-2 grandfathers this resource [BC Hydro procurement], as LADWP asserts, or not." *See* Staff Pre-Hearing Status Report, Docket 16-RPS-02 at 11.

Moreover, LADWP and Staff conducted extensive discussions regarding LADWP's BC Hydro procurement and are still at an impasse on these issues. On January 19, 2016, LADWP submitted to the Staff an extensive memorandum addressing the statutory interpretation of SBX1-2 relating to the grandfathering provisions for LADWP's legacy resources, including

LADWP's BC Hydro procurement. On June 3, 2016, Staff issued a letter to LADWP in which Staff deemed LADWP's BC Hydro procurement as ineligible for RPS credit. On June 14, 2016, Staff also acknowledged that Staff's determination regarding BC Hydro "is not pending additional information from LA." *See* Ting Decl. ¶ 29, Ex. 26 at 23:7-10. In sum, both parties agree that the Committee should consider and resolve LADWP's BC Hydro claims in this proceeding. The Committee should, therefore, consider these claims now in a consolidated proceeding to conserve resources and avoid unnecessary delay.

III. REQUEST FOR SCHEDULING ORDER

If the Committee grants LADWP's Motion, LADWP requests that the Committee issue an order scheduling briefing and hearing dates. During the Committee's July 13, 2016 Status Conference, the Committee adopted LADWP's proposed two-phase briefing schedule for addressing the biomethane issues raised in LADWP's Letter of Appeal. LADWP proposes that the Committee consider and adopt the same two-phase approach for resolving the BC Hydro claims. The parties' Phase I briefing would address the statutory-interpretation questions under SBX1-2 and related RPS legislation and the legal standards applicable to LADWP's BC Hydro procurement. If necessary for the BC Hydro claims, Phase II, in turn, would address any factual disputes regarding whether LADWP's BC Hydro procurement satisfies the applicable standards for receiving RPS credit for CP1. The proposed Phase II scheduling order would provide the schedule for the hearing on pending disputes, including deadlines for pre- and post-hearing briefing.

If LADWP's Motion is granted, the Committee and the parties can address the briefing schedule for the BC Hydro claims during one of the Committee's future status conferences. For reference, the Committee adopted the Phase I briefing schedule below for the biomethane issues.

The timing of the Committee's order to this Motion will determine whether the BC Hydro claims can be briefed using the Phase I biomethane schedule.

- LADWP Opening Brief – **August 29, 2016**
- Staff Opposition Brief – **September 21, 2016**
- LADWP Reply Brief – **September 30, 2016**

IV. CONCLUSION

LADWP thanks the Committee for its time and attention to these matters. For the foregoing reasons, LADWP respectfully requests that the Committee issue an order that:

- (i) adds LADWP's BC Hydro claims as described above into administrative proceeding 16-RPS-02;
- (ii) consolidates the BC Hydro claims and the existing biomethane claims currently pending before the Committee in 16-RPS-02 for an adjudication on the merits of these disputes by the Committee and Commission; and
- (iii) sets a hearing and briefing schedule for the parties to address the substantive merits of LADWP's BC Hydro claims.

Dated: July 22, 2016

Respectfully submitted,

/s/ Felix Lebron

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) 367-4500
Email: Felix.Lebon@ladwp.com