

DOCKETED

Docket Number:	16-RPS-02
Project Title:	Appeal by Los Angeles Department of Water & Power re Renewables Portfolio Standard Certification Eligibility
TN #:	212485
Document Title:	Committee Scoping and Scheduling Orders
Description:	includes Order Granting Motion to Add Consideration of 2007 British Columbia Hydroelectric Generation Contracts
Filer:	Paul Kramer
Organization:	Energy Commission Hearing Office
Submitter Role:	Committee
Submission Date:	7/27/2016 4:44:11 PM
Docketed Date:	7/27/2016



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

IN THE MATTER OF:

DOCKET No. 16-RPS-02

**APPEAL BY LADWP RE RPS CERTIFICATION OR
ELIGIBILITY**

**COMMITTEE SCOPING AND SCHEDULING ORDERS AND ORDER
GRANTING MOTION TO ADD CONSIDERATION OF 2007 BRITISH
COLUMBIA HYDROELECTRIC GENERATION CONTRACTS**

The Energy Commission Committee¹ (Committee) assigned to conduct proceedings on the Los Angeles Department of Water & Power (LADWP) Appeal regarding its Renewables Portfolio Standard (RPS) certifications or eligibility issues the following Scoping Orders and Committee Schedule for this Proceeding.

Background

On January 21, 2016, LADWP filed a Letter of Appeal² appealing the Executive Director's decision denying LADWP's Petition for Reconsideration of Energy Commission staff's denial of LADWP's Application for RPS certification for its Scattergood, Harbor, Valley, and Haynes Generating Stations Using Biomethane from 2009 Shell and Atmos Contracts. The Energy Commission appointed the Committee to conduct hearings and other proceedings on the appeal and recommend a decision for consideration by the full Energy Commission. On July 13, 2016, the Committee conducted a Committee Status Conference for the purpose of identifying the issues to be decided in this proceeding and a schedule. These orders result from the discussions at that status conference.

On July 15, 2016, the Committee issued a notice of four additional Committee Status Conferences³ to allow it, as necessary, to assess the parties' progress and readiness to proceed to hearings, frame the issues to be addressed during the hearings, refine the

¹ The Committee consists of Chair Robert Weisenmiller, Presiding Member, and Commissioner David Hochschild, Associate Member. The full Energy Commission made this Committee assignment at an Energy Commission Business Meeting on June 14, 2016.

² TN 211752-1. This and all of the documents filed in the docket for this proceeding may be found by consulting the Docket Log at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=16-RPS-02>

³ TN 212321. The conference dates are July 27, August 2, August 23, and September 6, 2016.

schedule for review and decision of the appeal, and address any then-pending motions, petitions, and other requests that are ready for consideration.

On July 22, 2016, LADWP filed a motion to add the eligibility of certain 2007 procurement contracts relating to electricity generated by small British Columbia Hydroelectric facilities (BC Hydro contracts) to its 2009 Shell and Atmos contract appeal.⁴ The motion asserts, and staff confirmed to us during the July 27, 2016 Committee Status Conference, that staff does not object to the motion.

Order Granting the BC Hydro Motion

We agree with the parties that the legal issues related to the BC Hydro contracts are similar in nature to those that apply to the 2009 Shell and Atmos contracts. It is more efficient to decide them together in this proceeding than in separate proceedings. We therefore **GRANT** LADWP's July 22, 2016 motion and add consideration of the BC Hydro contracts to our consideration of the 2009 Shell and Atmos contracts.

Scope of the Issues to be Addressed in this Proceeding (Scoping Order)

The Committee reviewed the parties' status reports for the July 13 Committee Status Conference. In those reports and the related discussions during the Status Conference, the parties recommend a two-phase approach to resolving the appeals. First, the Committee would decide the legal issues presented—which laws apply and what they require. Second, the Committee would apply those identified laws and standards to the facts of the appeals. Upon further review, for purposes of efficiency, we believe that it is appropriate at this time to ask for the identification of various facts which would be required to satisfy specified legal provisions (see questions 2.a. and 5.a., below). Following receipt of the parties' responses, we will determine whether evidentiary hearings or additional information are required prior to our determination of the legal issues. Similarly, although the Committee Schedule contains placeholder entries for "Phase II" events, we may subsequently determine that no such events are necessary.

Therefore, in order to determine the scope of hearings and whether hearings are necessary to resolve the appeals, the Committee directs the parties to file responses to the following Committee Questions. Initial responses shall be filed no later than 5:00 p.m. on Thursday, September 1, 2016. Replies to the initial responses, if any, shall be filed no later than 5:00 p.m. on Wednesday, September 21, 2016. As they will contain legal argument and assertions, we expect that legal counsel will sign or co-sign each filing.

Committee Questions

1. Public Resources Code section 25741(a)(1) sets forth as one of the criteria for a facility to be considered a "renewable electrical generation facility": "The facility uses biomass, solar thermal, ..." (Emphasis added.)

⁴ TN 212400.

- a. CEC Staff asserts that “the only way an electricity generation facility 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.”⁵ Staff specifically found that the contracts proffered by LADWP are insufficient to demonstrate “use.” Why is staff’s definition of “use” correct or incorrect? What is the legal basis for either staff’s definition or a different definition of the term “use”? Provide any information found in the legislative history, regulation, guidance from the CPUC, ARB, or CEC, applicable RPS Eligibility Guidebook, or industry custom and practice as to the definition of the term “use.” Specifically, identify any express language found in the RPS Eligibility Guidebook, Third Edition, interpreting “use”.
 - b. Does “use” require a specific contractual arrangement? If so, please describe that arrangement. Specifically, provide express language found in the RPS Eligibility Guidebook, Third Edition, requiring a specific type of contract.
 - c. Under the rules in place at the time of contract execution, did the 2009 Shell and Atmos contracts satisfy the “use” requirement? If not, why not?
2. Discuss whether each of the three identified grandfathering provisions—Public Utilities Code sections 399.12(e)(1)(C), 399.12.6(a), 399.16(d)—apply to the 2009 Shell and Atmos contracts.
 - a. Cite to supporting documents for each required element of the provisions. For example, did the LADWP board “approve” the facilities under section 399.12(e)(1)(C)?
 - b. Explain what “report” means as used in section 399.12.6(a)(1).
 - c. Explain what “under the rules in place at the time the contract was executed” means both times the phrase is used in section 399.12.6(a)(1).
 - d. Explain how the three grandfathering provisions can be harmonized.
3. Provide a list, together with the text, of all of the eligibility and procurement rules in place on the date(s) the 2009 Shell and Atmos contracts and the BC Hydro contracts were executed.
4. Regarding the BC Hydro contracts, was LADWP required, under the rules in place at the time the contracts were executed, or at any later time, to apply for certification of the contracts? Cite to any information found in the legislative history, regulation, guidance from the CPUC, ARB, or CEC, applicable RPS Eligibility Guidebook, or industry custom and practice and specifically, identify any express language found in the RPS Eligibility Guidebook, Third Edition.

⁵ TN 212214, footnote 14.

5. Discuss whether grandfathering provisions—Public Utilities Code sections 399.12(e)(1)(C) and 399.16(d)—apply to the BC Hydro contracts.
 - a. Cite to supporting documents for each required element of the provisions. For example, did the LADWP board “approve” the facilities under section 399.12(e)(1)(C)?
6. Explain whether and how, under applicable rules and standards, the 2009 Shell and Atmos contracts and BC Hydro contracts are to be counted, or related facilities certified, under the Renewable Portfolio Standard (RPS).
 - a. Public Utilities Code section 399.12.6(a) uses the term “count.” Public Utilities Code section 399.16(d) uses “count in full.” Explain whether there is any difference in the application of these two sections in the “counting” of resources against the RPS requirements.
7. If either party desires to present additional argument that is not directly responsive to the above Committee Questions, they may do so.

Committee Schedule

The Committee Schedule contains a list of events which must occur in order to complete the appeal process. This initial Committee Schedule covers the period up to the filing of party replies to party responses to the Committee’s questions, above, with the balance of the schedule to be determined by the Committee following consideration of the party responses and replies. The Committee may modify the Committee Schedule at any time upon either its own motion or that of a party. (Cal. Code Regs., tit. 20, § 1709.7(c).)

Public Participation and Public Adviser

Members of the public are welcome to attend and offer comments at the Committee Status Conferences. Written comments may be submitted throughout the proceeding and should be electronically submitted via:

<https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=16-RPS-02>

Alternatively, written comments may be submitted by e-mailing them to docket@energy.ca.gov, or by U.S. Mail to:

California Energy Commission - Docket Unit
Docket Number 16-RPS-02
1516 Ninth Street, MS-4
Sacramento, CA 95814

For all written comments, please include the docket number and proceeding name, “16-RPS-02, LADWP RPS Appeal”, in the subject line and on the cover page.

PLEASE NOTE: Your written and oral comments, attachments, and associated contact information (e.g., your address, phone, e-mail, etc.) become part of the viewable public record. This information may also become available via search engines such as Google and Yahoo.

The Energy Commission's Public Adviser's Office is available to assist the public in understanding the proceedings and to facilitate meaningful participation. For assistance, contact Alana Mathews, Public Adviser, at (916) 654-4489 or (800) 822-6228, or by e-mail at publicadviser@energy.ca.gov.

If you have a disability and need assistance to participate in any events, contact Poneh Jones no less than five days prior to the event at (916) 654-4425, or by e-mail at poneh.jones@energy.ca.gov.

Information

Information regarding the status of this proceeding, as well as committee notices, orders, and other documents filed in this proceeding, may be found by consulting the Docket Log at:

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=16-RPS-02>

Direct links to submit an electronic comment, search the documents filed in this proceeding and view the Docket Log are found on right-hand sidebar of the Energy Commission's main RPS web page at: <http://www.energy.ca.gov/portfolio/>.

To receive an e-mail when notices and other new documents are filed in this proceeding, you may sign up for the List Server list "ladwp_appeal." Navigate to <http://www.energy.ca.gov/listservers/index.html>, provide your name and e-mail address and select the "ladwp_appeal" list under "Renewable Energy Lists."

Questions of a legal or procedural nature should be directed to Paul Kramer, Hearing Officer, at 916-654-5103, or by e-mail at paul.kramer@energy.ca.gov.

Media inquiries should be directed to the Media and Public Communications Office at (916) 654-4989 or by e-mail at mediaoffice@energy.ca.gov.

Dated: July 27, 2016, at Sacramento, California.

Original signed by

ROBERT B. WEISENMILLER
Chair and Presiding Member
LADWP Appeal Committee

Original signed by

DAVID HOCHSCHILD
Commissioner and Associate Member
LADWP Appeal Committee

**LADWP RPS APPEAL
COMMITTEE SCHEDULE
16-RPS-02**

ACTIVITY	DATE
Initial Committee Status Conference	July 13, 2016
LADWP request regarding BC Hydro facilities filed	July 22, 2016
Committee Status Conference	July 27, 2016
Committee Status Conference	August 2, 2016
Committee Status Conference	August 23, 2016
LADWP and Staff Responses to Committee Questions filed	September 1, 2016
Committee Status Conference	September 6, 2016
LADWP and Staff Replies (if any) filed	September 21, 2016
Committee Status Conference	tbd
Parties file Prehearing Conference statements, including witness and exhibit lists	tbd
Phase I Prehearing Conference	tbd
Phase I Evidentiary Hearing	tbd
Committee Phase I Decision filed	tbd
(If deemed appropriate) Energy Commission review of Phase I Decision	tbd
Parties file Phase II briefs, Prehearing Conference statements, witness and exhibit lists	tbd
Phase II Prehearing Conference	tbd
Phase II Evidentiary Hearing	tbd
Committee Phase II Decision filed	tbd
Committee Conference	tbd
Final Commission Decision	tbd

tbd = to be determined