

DOCKETED

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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: Joint Statement of Stipulated Facts
RPS Certification or Eligibility)	
)	
)	
)	

JOINT STATEMENT OF STIPULATED FACTS

SUBMITTED BY LADWP AND CEC RPS STAFF

October 5, 2016

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JOINT STATEMENT OF STIPULATED FACTS

The City of Los Angeles, acting by and through the Department of Water and Power, a municipal corporation (“LADWP”), and California Energy Commission Staff (“Staff”) hereby submit their Joint Statement of Stipulated Facts and Supporting Evidence (“Joint Statement”) in CEC Docket No. 16-RPS-02. The Joint Statement is submitted in response to the Committee order of September 6, 2016, as memorialized in the September 7, 2016 memorandum of Hearing Officer Paul Kramer. The Joint Statement identifies material facts by pertinent issue and includes references to supporting evidence.

Summary of LADWP’s RPS Programs and Policies.

Fact No.	Material Fact	Supporting Evidence
1.	Senate Bill 1078 (“SB 1078”) became effective on January 1, 2003.	SB 1078 (Stats. 2002, ch. 516)
2.	SB 1078 had a companion bill – Senate Bill 1038 (“SB 1038”) – that was concurrently enacted and became effective on January 1, 2003.	SB 1078; SB 1038 (Stats. 2002, ch. 515)
3.	SB 1078 added Article 16 (commencing with Section 399.11) to Chapter 2.3 or Part 1 of Division 1 of the Public Utilities Code (“PUC”).	SB 1078; PUC § 399.11

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Fact No.	Material Fact	Supporting Evidence
4.	SB 1078 added PUC Section 399.15(b)(1) which established an RPS target for California’s electrical corporations (commonly referred to as investor owned utilities or “IOUs”) to procure 20 percent of retail sales from eligible renewable energy resources by December 31, 2017.	PUC § 399.15(b)(1), as enacted by SB 1078
5.	SB 1078 also added PUC Section 399.13, which required that the California Energy Commission (CEC) “certify eligible renewable energy resources that it determines meet the criteria described in subdivision (a) of Section 399.12.”	PUC §§ 399.12, 399.13, as enacted by SB 1078
6.	SB 1078 required the CEC to design and implement an accounting system to verify compliance with renewables portfolio standard by retail sellers, to ensure that renewable energy output is counted only once for the purpose of meeting the renewable portfolio standards of this state or any other state, and for verifying retail product claims in this state or any other state.	PUC § 399.13(b), as enacted by SB 1078.
7.	PUC Section 399.12(b)(4)(C) specified that the defined term “retail seller” expressly excluded “a local publicly owned electrical utility as defined in subdivision (d) of [PUC] Section 9604.”	PUC § 399.12(b)(4)(C), as enacted by SB 1078. PUC § 9604(d)
8.	SB 1038 amended the PUC Section 383.5.	PUC § 383.5, as amended by SB 1038
9.	SB 1038 amended the definition of “in-state renewable electricity generation technology” referenced in PUC Section 399.12.	PUC § 399.12, as amended by SB 1038
10.	As amended by SB 1038, Section 383.5(a) provided: “It is the intent of the Legislature in establishing this program, to increase the amount of renewable electricity generated per year, so that it equals at least 17 percent of the total electricity generated for consumption in California.”	SB 1038; PUC § 383.5(a)

Fact No.	Material Fact	Supporting Evidence
11.	As amended by SB 1038, PUC Section 383.5(b)(1) defined "In-state renewable electricity generation technology" as a facility that met the following criteria: (A) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology. (B) The facility is located in the state or near the border of the state with the first point of connection to the Western Electricity Coordinating Council (WECC) transmission system located within this state.	PUC § 383.5(b)(1)(A)-(B), as amended by SB 1038
12.	SB 1078 did not establish mandatory RPS procurement targets for local publicly owned electric utilities (POUs), like LADWP.	SB1078; PUC. § 387
13.	On October 15, 2004, the City Council adopted a motion and resolution approving the inclusion of LADWP's aqueduct generating units greater than 30 MWs in size as eligible resources under LADWP's RPS policy.	Supp. Ting Decl. at ¶47, Ex. 331 Bates No. LA001593
14.	On June 29, 2005, the City Council approved the 2005 RPS Policy.	Ting Decl. ¶ 9, Ex. 06; Ting Decl. ¶ 10, Ex. 07 Bates No. LA000023
15.	LADWP's 2005 RPS Policy defined the list of "Eligible Resources" as follows: Electricity produced from the following technologies constitute 'eligible' resources: biomass, biodiesel, digester gas, fuel cells using renewable fuels, geothermal, landfill gas, municipal solid waste only if the energy conversion process does not employ direct combustion of solid fuel; ocean wave, ocean thermal, and tidal current technologies; solar photovoltaic, small	Ting Decl. ¶ 9, Ex. 06 Bates No. LA000020

Fact No.	Material Fact	Supporting Evidence
	hydro 30 MWs or less, and the Los Angeles Aqueduct hydro power plants; solar thermal, wind; and other renewables that may be defined later.	
16.	SB 107 accelerated the RPS goals of retail sellers to a 20% RPS by 2010.	SB107
17.	As amended on April 11, 2007, LADWP's Board adopted Resolution No. 007-197 approving an amendment to the 2005 RPS Policy to incorporate the changes found in SB107, including 20% RPS by 2010.	Ting Decl. ¶ 10, Ex. 7 Bates Nos. LA000034-LA000035 ("2007 RPS Policy")
18.	The 2007 RPS Policy required that 20 percent of LADWP's energy sales to retail customers be generated from renewable resources by December 31, 2010.	Ting Decl. ¶ 10, Ex. 7 Bates Nos. LA000022-LA000038 ("2007 RPS Policy")
19.	Section 3 of the 2007 RPS Policy defined "Eligible Resources" as: Electricity produced from the following technologies constitute 'eligible' resources: biomass, biodiesel, digester gas; fuel cells using renewable fuels; geothermal; landfill gas; municipal solid waste only if the energy conversion process does not employ direct combustion of solid fuel; ocean wave; ocean thermal, and tidal current technologies; solar photovoltaic; small hydro 30 MW or less, and the Los Angeles Aqueduct hydro power plants; solar thermal; wind; and other renewable resources that may be defined later.	Ting Decl. ¶ 10, Ex. 7 Bates No. LA000031 ("2007 RPS Policy")
20.	On May 20, 2008, LADWP's Board adopted Resolution No. 008-247 approving an amendment to the 2007 RPS Policy.	Ting Decl. ¶ 11, Ex. 8 ("2008 RPS Policy")
21.	Section 3 of the 2008 RPS Policy contained LADWP's amended definition of "Eligible Resources:" Electricity produced from the following technologies constitute 'eligible' resources: biodiesel; biomass; conduit hydroelectric (hydroelectric facilities such	Ting Decl. ¶ 11, Ex. 8 Bates No. LA000045 ("2008 RPS Policy")

Fact No.	Material Fact	Supporting Evidence
	as an existing pipe, ditch, flume, siphon, tunnel, canal, or other manmade conduit that is operated to distribute water for beneficial use); digester gas; fuel cells using renewable fuels; geothermal; hydroelectric incremental generation from efficiency improvements; landfill gas; municipal solid waste; ocean thermal, ocean wave, and tidal current technologies; renewable derived biogas (meeting the heat content and quality requirements to qualify as pipeline-grade gas) injected into a natural gas pipeline for use in a renewable facility; multi-fuel facilities using renewable fuels (only the generation resulting from the renewable fuels will be eligible), small hydro 30 MW or less, and the Los Angeles Aqueduct hydro power plants; solar photovoltaic; solar thermal electric, wind, and other renewables that may be defined later.	
22.	On April 12, 2011, Governor Brown signed Senate Bill X1-2 (“SBX1-2”) into law with an effective date of December 10, 2011.	SBX1-2 (Stats. 2011, first ex. sess., ch. 1)
23.	SBX1-2 amended and added various sections to Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, entitled the “California Renewables Portfolio Standard Program.” Among the sections added to Article 16 by SBX1-2 was Section 399.30, which established RPS requirements applicable to POUs.	SBX1-2; PUC § 399.30.
24.	PUC Section 399.30 required that the governing boards of POUs, like LADWP, adopt RPS procurement plans. Section 399.30 also required the governing boards of POUs adopt a program for enforcement of the RPS on or before January 12, 2012.	PUC § 399.30(a) and (e), as enacted by SBX1-2.
25.	On December 6, 2011, LADWP’s Board adopted Resolution No. 012-109, which amended LADWP’s 2008 RPS policy to	Ting Decl. ¶12, Ex. 09 Bates Nos. LA000057-LA000075 (“2011 RPS Policy”)

Fact No.	Material Fact	Supporting Evidence
	implement the new legislative requirements under SBX1-2.	
26.	PUC Section 399.30(c)(3) stated that “a local publicly owned electric utility shall adopt procurement requirements consistent with Section 399.16.”	PUC § 399.30(c)(3), as enacted by SBX1-2
27.	SBX1-2 added Section 399.30(n) to the Public Utilities Code.	SBX1-2; PUC § 399.30(n)
28.	Section 399.30(n) stated that: On or before July 1, 2011, the Energy Commission shall adopt regulations specifying procedures for enforcement of this article. The regulations shall include a public process under which the Energy Commission may issue a notice of violation and correction against a local publicly owned electric utility for failure to comply with this article, and for referral of violations to the State Air Resources Board for penalties pursuant to subdivision (o).	PUC § 399.30(n), as enacted by SBX1-2
29.	The CEC’s RPS Enforcement Regulations for POUs were approved by the State of California Office of Administrative Law on August 28, 2013, and the regulations became effective on October 1, 2013.	20 C.C.R §§ 3200-3208, 1240
30.	Section 3 of the 2013 RPS Policy included references to the Section 3204 of Title 20 of the California Code of Regulations for LADWP’s RPS procurement targets.	Ting Decl. ¶13, Ex. 10 Bates No. LA000087 (“2013 RPS Policy”)

LADWP’s B.C. Hydro Power Purchase Agreements with Powerex.

Fact No.	Material Fact	Supporting Evidence
31.	On March 6, 2007, LADWP’s Board adopted Resolution No. 007-166, which approved the Powerex BC-Hydro PPAs.	Ting Decl. ¶ 15, Ex. 12 Bates No. LA000105-LA000106 (Resolution No. 007-166); id. ¶¶ 21-22, Exs. 18-19 Bates Nos. LA000118-LA000273
32.	On March 23, 2007, the City Council approved the Powerex BC-Hydro PPAs.	Ting Decl. ¶ 19, Ex. 16 Bates No. LA000115 (City Council

Fact No.	Material Fact	Supporting Evidence
		Action dated Mar. 23, 2007)
33.	The City executed Ordinance No. 178533 on March 23, 2007.	Ting Decl. ¶ 20, Ex. 17 Bates Nos. LA000116-LA000117 (Ordinance No. 178533)
34.	Los Angeles City Ordinance No. 178533 approved the execution of the Powerex BC-Hydro PPAs.	Ting Decl. ¶ 20, Ex. 17 Bates No. LA000116 (Ordinance No. 178533)
35.	Powerex and LADWP entered into two contracts for the purchase of renewable energy: Power Purchase Agreement No. BP 05-020- (“Contract A”) and Power Purchase Agreement No. BP-020-B (“Contract B”)	Ting Decl. ¶¶ 21-22; Declaration of Robert Campbell (TN213750) (Campbell Decl.) at ¶4; Exs. 18-19 (TN# 212419 and TN# 212420) Bates Nos. LA000118-LA000273
36.	The term of Powerex BC-Hydro PPAs started in April 2007 and expired in December 2011 for a total term of four years and nine months.	Ting Decl. ¶¶ 21-22, Exs. 18-19 at § 3.1 (Effective Date and Term) ¶2.2, Ex. 19, Bates No. LA000213 ¶21, Ex. 18 Bates No. LA000134

LADWP’s 2009 Shell and Atmos Biomethane Agreements.

Fact No.	Material Fact	Supporting Evidence
37.	The 2009 Shell and Atmos biomethane agreements are based on North American Energy Standards Board (“NAESB”) base contracts for the purchase and sale of natural gas.	Supp. Ting Decl. ¶3 , Ex. 27, ¶4, Ex. 28 Bates Nos. LA000508-LA000557
38.	On August 13, 2002, the City approved Ordinance No. 174755, which amended the Los Angeles Administrative Code to add Section 10.5.3.	Supp. Ting Decl. ¶ 54, Ex. 338 (Ordinance No. 174755) Bates Nos. LA001619-LA001622
39.	Ordinance No. 174755 delegated authority to LADWP’s Board under Section 10.5.3 to enter into certain contracts and financial transactions for natural gas.	Supp. Ting Decl. ¶ 54, Ex. 338 (Ordinance No. 174755) Bates Nos. LA001619-LA001622
40.	Section 10.5.3 delegated authority to enter into contracts for the purchase of natural gas with a maximum term of five years and a maximum price of \$7.50 per million	Supp. Ting Decl. ¶ 54, Ex. 338 (Ordinance No. 174755 at § 10.5.3(1)(c); (1)(i)) Bates Nos.

Fact No.	Material Fact	Supporting Evidence
	British Thermal Units (“MMBtu”).	LA001619-LA001620
41.	On June 3, 2003, LADWP’s Board adopted Resolution No. 003-285, which approved LADWP’s use of a form NAESB Agreement for the purchase of natural gas.	Supp. Ting Decl. ¶ 40, Ex. 64 (LADWP Board Letter dated Jun. 3, 2003); Ex. 66 (Resolution No. 003-285) Bates Nos. LA000753-LA000754
42.	The Board’s Resolution approved the use of a form of NAESB Base Contract for the Sale and Purchase of Natural Gas.	Supp. Ting Decl. ¶ 41, Ex. 65 Bates Nos. LA000755-LA000766
43.	The Board confirmed that the approved NAESB Base Contract satisfied the requirements under Los Angeles Administrative Code Section 10.5.3.	Supp. Ting Decl. ¶ 42, Ex. 66 (Resolution No. 003-285) Bates No. LA000767
44.	The Board also delegated authority to LADWP’s General Manager to use the form NAESB Contract for natural gas purchases for a term not to exceed five years.	Supp. Ting Decl. ¶ 42, Ex. 66 Bates No. LA000767 (Resolution No. 003-285)
45.	On January 24, 2006, LADWP’s Board adopted Resolution No. 006-122, which approved recommended amendments to Los Angeles Administrative Code Section 10.5.3 to extend the maximum term of natural gas contracts from five years to ten years and to increase the maximum purchase of natural gas prices from \$7.50/MMBtu to \$10/MMBtu.	Supp. Ting Decl. ¶¶ 52, Ex. 336 (LADWP Board Letter dated Jan. 24, 2006); Ex. 337 Bates Nos. LA001616-LA001618 (Resolution No. 006-122)
46.	On March 16, 2006, the City Council took Action approving an amendment to Section 10.5.3 of the Los Angeles Administrative Code to change the maximum contract term to ten years and the maximum purchase price to \$10/MMBtu.	Supp. Ting Decl. ¶¶ 50-55, Ex 334 (CAO Report re Amendment to Section 10.5.3) Bates No. LA001612; Ex. 335 Bates No. LA001615 (E&E Committee Report re Amendment to Section 10.5.3); and Ex. 335 Bates No. LA001614) (City Council Action Approving Amendment to Section 10.5.3).
47.	On March 13, 2006, the City approved	Supp. Ting Decl. ¶ 55, Ex. 339

Fact No.	Material Fact	Supporting Evidence
	Ordinance No. 177405, which amended Los Angeles Administrative Code Section 10.5.3.	Bates Nos. LA001610-LA001620 (Ordinance No. 177405)
48.	The LADWP’s 2008 RPS Policy amended the list of “eligible” resources to include “renewable derived biogas (meeting the heat content and quality requirements to qualify as pipeline-grade gas) injected into a natural gas pipeline for use in a renewable facility; multi-fuel facilities using renewable fuels (only the generation resulting from the renewable fuels will be eligible).”	Ting Decl. ¶ 11, Ex. 8 Bates No. LA000045
49.	Appendix B of the Biogas Memo attached a sample NAESB Transaction Confirmation for the purchase of renewable biogas.	Supp. Ting Decl. ¶ 56, Ex. 343 Bates Nos. LA001659-LA001661 (LADWP Biogas Memo dated July 27, 2009)
50.	On February 1, 2008, LADWP and Shell entered into a NAESB Base Contract for Sale and Purchase of Natural Gas, LADWP Agreement No. 96-125-510 (the “2009 Shell Agreement”).	Supp. Ting Decl. ¶ 3, Ex. 27 Bates Nos. LA000508-LA000528
51.	The Shell NAESB Contract was based on the form NAESB Agreement approved by LADWP’s Board on June 3, 2003.	Supp. Ting Decl. ¶¶ 40-42, Exs. 64-66 Bates Nos. LA000753-LA000768; Supp. Ting Decl. ¶ 3, Ex. 27 Bates Nos. LA000508-LA000527
52.	LADWP’s General Manager delegated his authority for Natural Gas Transactions, dated Mar. 31, 2008.	Second Supp. Ting Decl. ¶ 10, Ex. 385 Bates No. LA002840
53.	On July 27, 2009, LADWP and Shell entered into a Transaction Confirmation under this Base Contract for the purchase of “renewable biomethane” as metered and delivered from designated landfills on a monthly basis, The Transaction Confirmation identified the following designated landfills in Attachment-A: (1) Rumpke Sanitary Landfill, located in Cincinnati, Ohio.	Supp. Ting Decl. ¶ 3, Ex. 27 Bates Nos. LA000520-LA000523

Fact No.	Material Fact	Supporting Evidence
	<p>(2) Fort Smith Landfill, located In Fort Smith, Arkansas.</p> <p>(3) Greenwood Farms Landfill, located in Tyler, Texas.</p> <p>(4) Jefferson Davis Parish Sanitary Landfill, located in Welsh, Louisiana.</p>	
54.	<p>On August 25, 2009, LADWP and Shell entered into the First Amendment to the Transaction Confirmation dated July 27, 2009. The First Amendment to the Transaction Confirmation identified the following additional designated landfill in Attachment C:</p> <p>Johnson County Landfill, located in or near Shawnee, Kansas.</p>	Supp. Ting Decl. ¶ 3, Ex. 27 Bates Nos. LA000524- LA000534
55.	<p>On March 31, 2010, LADWP and Shell entered into the Second Amendment to the Transaction Confirmation dated July 27, 2009. The Second Amendment to the Transaction Confirmation identified the following additional designated landfill in Attachment C-1 to Attachment C:</p> <p>(1) Pinnacle Gas Producers, LLC Pinnacle Road Landfill in or near Moraine, Ohio, and the Stony Hollow Landfill in or near Dayton, Ohio.</p> <p>(2) Westside Gas Producers, LLC Landfill, located in or near Three Rivers Michigan.</p>	Supp. Ting Decl. ¶ 3, Ex. 27 Bates Nos. LA000534- LA000535
56.	The First and Second Amendments added additional landfill facilities to the LADWP and Shell July 27, 2009 Transaction Confirmation contract.	Supp. Ting Decl. ¶ 3, Ex. 27 Bates Nos. LA000524-000535
57.	The Shell Base Contract, Transaction Confirmation, First Amendment, and Second Amendment are collectively referred to herein as the “Shell Agreement.”	Supp. Ting Decl. ¶ 3, Ex. 27 Bates Nos. LA000508- LA000535

Fact No.	Material Fact	Supporting Evidence
58.	The Shell Agreement had a term starting on August 1, 2009 and ending on June 30, 2014.	Supp. Ting Decl. ¶ 3, Ex. 27 Bates No. LA000520
59.	LADWP agreed to pay Shell a fixed contract price of “\$9.80 per MMBtu for the quantity documented as Renewable Biomethane (‘RB’) as metered and delivered from the designated Landfill(s) (see Attachment A) on a monthly basis.”	Supp. Ting Decl. ¶ 3, Ex. 27 Bates No. LA000520
60.	LADWP agreed to pay Shell a contract price of “\$5.80 per MMBtu for the quantity of delivered Standard Baseload gas on a monthly basis that is in excess of the documented metered and delivered RB from the designated Landfill(s).”	Supp. Ting Decl. ¶ 3, Ex. 27 Bates No. LA000520
61.	The Shell Agreement provided that “Seller shall sell to Buyer, and Buyer shall purchase from Seller 3,500 MMBtu per Day for August 1, 2009 through August 31, 2009 and 8,200 MMBtu per Day for September 1, 2009 through June 30, 2014 (‘Contract Quantity’) consisting of both RB and Standard Baseload gas as set forth in the Special Conditions.”	Supp. Ting Decl. ¶ 3, Ex. 27 Bates No. LA000520
62.	The “Special Conditions” in the Shell Agreement defined “Renewable Biomethane” or “RB” as “gas produced from the Project that consists of Landfill Gas as that term is defined in the California Energy Commission’s (CEC) Renewable Energy Program Overall Program Guidebook (January 2008)...” and acknowledged that “RB, as defined herein, is a qualifying resource under Buyer’s [LADWP] Renewable Portfolio Standard (‘RPS’) program in effect as of the execution date of this Transaction Confirmation, and neither Party makes any further representations in this regard.”	Supp. Ting Decl. ¶ 3, Ex. 27 Bates No. LA000520
63.	The Shell Agreement further provided that “Seller further agrees that all deliveries of RB received by Seller under said contracts	Supp. Ting Decl. ¶ 3, Ex. 27 Bates No. LA000520

Fact No.	Material Fact	Supporting Evidence
	with the designated landfills shall be delivered to Buyer under this Transaction Confirmation up to the Contract Quantity.”	
64.	The Shell Agreement provided that the Delivery Point for the receipt of the Renewable Biogas was the natural gas terminal located at Opal, Wyoming.	Supp. Ting Decl. ¶ 3, Ex. 27 Bates No. LA000520
65.	Kern River Gas Transmission Company owned and operated the interstate natural gas pipeline system where the Opal terminal point was located.	Supp. Ting Decl. ¶ 5-22, Exs. 29-46 Bates Nos. LA000558-LA000621
66.	<p>The Shell Agreement included a section titled “Seller’s Support of Buyer’s RPS Program” that provided:</p> <p>Seller will provide an attestation identifying the specific landfill source, the stating the RB source is Landfill Gas, that the RB is injected into a pipeline at the landfill and is measured in BTU’s. The parties understand that this RB will be delivered to Buyer through an exchange rather than direct long-haul transportation. Specifically, the environmental attributes will be unbundled from the gas at or near the landfill source, and the resulting gas without environmental attributes will be sold by Seller in the local market. The gas will be replaced with an equal volume of gas and re-bundled with the environmental attributes for delivery to Buyer at the specified Delivery Point as RB. Seller shall provide any additional documentation or information related to the supply of RB, to the Buyer, as reasonably required to support Buyer’s ongoing reporting compliance with Buyer’s RPS program.</p>	Supp. Ting Decl. ¶ 3, Ex. 27 Bates No. LA000521
67.	On July 30, 2009, LADWP and Atmos Energy entered into a NAESB Base Contract for Sale and Purchase of Natural Gas, LADWP	Supp. Ting Decl. ¶ 4, Ex. 28 Bates Nos. LA000536-LA000549

Fact No.	Material Fact	Supporting Evidence
	Agreement No. 96-125-516.	
68.	The Atmos NAESB Contract was based on the form NAESB Agreement approved by LADWP's Board on June 3, 2003.	Supp. Ting Decl. ¶¶ 40-42, Exs. 64-66 Bates Nos. LA000753-LA000768; Supp. Ting Decl. ¶ 4, Ex. 28 Bates Nos. LA000536-LA000549.
69.	The Atmos Base Contract and Transaction Confirmations (Ex. 28) are collectively referred to herein as the "Atmos Agreement."	Supp. Ting Decl. ¶4, Ex. 28 Bates Nos. LA000536-LA000557
70.	The Atmos Agreement had a term starting on September 1, 2009 and ending on July 31, 2014.	Supp. Ting Decl. ¶4, Ex. 28 Bates No. LA000551
71.	LADWP agreed to pay Atmos a fixed contract price of "\$9.80 per MMBtu" for the Landfill Gas.	Supp. Ting Decl. ¶4, Ex. 28 Bates No. LA000555
72.	The Atmos Agreement provided that "Seller shall sell to Buyer, and Buyer shall purchase from Seller, up to 5,000 MMBtus per Day ('Contract Quantity') for the Delivery Period, consisting of both the Environmental Attributes and Standard Base Load gas as set forth in the Special Conditions" under the First Transaction Confirmation. And the Atmos Agreement provided that "Seller shall sell to Buyer, and Buyer shall purchase from Seller, up to 600 MMBtus per Day ('Contract Quantity') for the Delivery Period, consisting of both Renewable Attributes and Standard Base Load gas as set forth in the Special Conditions" under the Second Transaction Confirmation. Under First and Second Transaction Confirmations combined, the Atmos Agreement provided up to 5,600 MMBtus per Day of gas.	Supp. Ting Decl. ¶4, Ex. 28 Bates No. LA000536-LA000557
73.	The Atmos Agreement had a "Special Conditions" defined "Standard Base Load" as "gas produced from the Project that consists of Landfill Gas as that term	Supp. Ting Decl. ¶4, Ex. 28 Bates No. LA000555-LA000556

Fact No.	Material Fact	Supporting Evidence
	is defined in the California Energy Commission's (CEC) Renewable Energy Program Overall Program Guidebook (January 2008)..." and acknowledged that "Landfill Gas, as defined herein, is a qualifying resource under Buyer's [LADWP] Renewable Portfolio Standard ('RPS') program in effect as of the execution date of this Transaction Confirmation, and neither party makes any further representation in this regard."	
74.	The Atmos Agreement further provided that "Seller further agrees that all deliveries of Landfill Gas received by Seller under said contracts with the designated landfills shall be delivered to Buyer under this Transaction Confirmation up to the Contract Quantity hereof."	Supp. Ting Decl. ¶4, Ex. 28 Bates No. LA000551
75.	The Atmos Agreement provided a Delivery Point for the receipt of the Landfill Gas was the Kern River Transmission natural gas terminal located at Opal, Wyoming.	Supp. Ting Decl. ¶4, Ex. 28 Bates No. LA000551
76.	The Atmos Agreement included a section titled "Seller's Support of Buyer's RPS Program" that provided: Seller will provide an attestation identifying the specific landfill source, stating the supply source is Landfill Gas and that the Landfill Gas in is injected into a pipeline at the landfill and is measured in BTU's. The parties understand that this Landfill Gas will be delivered to Buyer through an exchange rather than direct long-haul transportation. Specifically, the environmental attributes will be unbundled from the gas at or near the landfill source, and the resulting gas without environmental attributes will be sold by Seller in the local market. The gas will be replaced with an equal volume	Supp. Ting Decl. ¶4, Ex. 28 Bates No. LA000553

Fact No.	Material Fact	Supporting Evidence
	of gas and re-bundled with the environmental attributes for delivery to Buyer at the specified Delivery Point as Standard Base Load. Seller shall provide any additional documentation or information related to the supply of Standard Base Load, to the Buyer; as reasonably required to support Buyer's ongoing reporting compliance with Buyer's RPS program."	
77.	LADWP used its Firm Transportation Service Agreement with Kern River Gas Transmission Company ("KRT") to transport the gas purchased under the Shell and Atmos Agreements from the receipt point at Opal to the Southern California Gas Company's (SoCal Gas or SoCal) delivery points in Southern California.	Supp. Ting Decl. ¶¶ 17, Ex. 41 Bates Nos. LA000601- LA000605 (Restatement of KRT Firm Transportation Agreement No. 1006); Ex. 46 (Restatement of KRT Firm Transportation Agreement No. 1706); ¶22, Ex. 46 Bates Nos. LA000617- LA000621
78.	LADWP's Restatement of KRT Firm Transportation Agreement No. 1006 is a restatement of LADWP's original firm transportation agreement entered into on April 2, 1990.	Supp. Ting Decl. ¶¶ 13-17, Exs 37-41 Bates Nos. LA000590- LA000605
79.	LADWP's Restatement of KRT Firm Transportation Agreement No. 1706 is a restatement of LADWP's expanded firm transportation service agreement executed on May 21, 2001.	Supp. Ting Decl. ¶¶ 18-22, Exs. 42-46 Bates Nos. LA000606- LA000621
80.	On March 5, 2013, LADWP's Board adopted Resolution No. 013-188, which approved the Restatement of KRT Firm Transportation Agreement No. 1006.	Supp. Ting Decl. ¶ 14, Ex. 38 Bates Nos. LA000593- LA000594 (Resolution No. 013-188)
81.	On March 5, 2013, LADWP's Board also adopted Resolution No. 013-193, which approved the Restatement of KRT Firm Transportation Agreement No. 1706.	Supp. Ting Decl. ¶ 19, Ex. 43 Bates Nos. LA000609- LA000610 (Resolution No. 013-193)
82.	On April 17, 2013, the City Council approved the Restatement of KRT Firm Transportation Agreements Nos. 1006 and 1706.	Ting Decl. ¶¶ 16, 21, Ex. 40 Bates Nos. LA000599- LA000600 (City Council approval of Agreement No.

Fact No.	Material Fact	Supporting Evidence
		1006); Ex. 45 Bates Nos. LA000615-LA000616 (City Council approval Agreement No. 1706)

SBX1-2 and AB 2196.

Fact No.	Material Fact	Supporting Evidence
83.	SB 1078 added Sections 387 to the Public Utilities Code and became effective January 1, 2003.	SB 1078; PUC § 387
84.	Section 387(a) provided that “[e]ach governing body of a [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.”	PUC § 387(a), as added by SB 1078
85.	SB 1078 also added PUC Section 399.13, which required that the CEC “certify eligible renewable energy resources that it determines meet the criteria described in subdivision (a) of Section 399.12.” PUC Section 399.13 also required that the CEC “design and implement an accounting system to verify compliance with renewables portfolio standard by retail sellers, to ensure that renewable energy output is counted only once for the purpose of meeting the renewable portfolio standards of this state or any other state, and for verifying retail product claims in this state or any other state.” The CEC’s certification and accounting-verification requirements under Section 399.13 applied to “retail sellers.” POU were not	PUC §§ 399.12(b)(4)(C) and 399.13(a) and (b), as added by SB 1078

Fact No.	Material Fact	Supporting Evidence
	subject to the CEC's certification and accounting-verification requirements under PUC Section 387.	
86.	In December 2008, the CEC issued a report regarding <i>The Progress of California's Publicly Owned Utilities in Implementing Renewables Portfolio Standard</i> .	Ting Decl. ¶ 23, Ex. 20, Bates Nos. LA000274-LA000321
87.	<i>The Progress of California's Publicly Owned Utilities in Implementing Renewables Portfolio</i> report stated that "[s]tate law provides the governing board of each POU with the authority to determine the resource eligibility rules under its RPS program."	Ting Decl. ¶ 23, Ex. 20 Bates Nos. LA000274-LA000321
88.	California passed Assembly Bill 2196 ("AB 2196") in September 2012.	AB 2196 (Stats. 2012, ch. 605)
89.	The CEC adopted the Fourth Edition RPS Eligibility Guidebook on December 15, 2010.	TN#213250

LADWP's Reported REC Claims .

Fact No.	Material Fact	Supporting Evidence
90.	The Scattergood, Harbor, Valley and Haynes facilities are currently certified for the RPS by the CEC based on the use of biomethane procured under LADWP's 2011 Shell contract.	Ex. 367, Bates Nos. LA002468-LA002483; TN#213404 (CEC RPS Certificates for Scattergood, Harbor, Valley, and Haynes Generating Facilities);

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