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**BEFORE THE ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of:

Appeal by LADWP re
RPS Certification or Eligibility

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**CALIFORNIA ENERGY COMMISSION STAFF STATEMENT
OF DISPUTED FACTS AND SUPPORTING EVIDENCE
IN RESPONSE TO THE COMMITTEE ORDER OF SEPTEMBER 6, 2016**

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October 12, 2016

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I. INTRODUCTION

California Energy Commission Staff (“Staff”) hereby submit its Statement of Disputed Facts and Supporting Evidence (“Staff Statement of Disputed Facts”) in CEC Docket No. 16-RPS-02. The Staff Statement of Disputed Facts 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,¹ and further clarified in Mr. Kramer’s memorandum of September 23, 2016.² The Staff Statement of Disputed Facts lists material facts that Staff believes are necessary to resolve the issues in the subject appeal. These listed material facts are in addition to the material facts stipulated by Staff and the Los Angeles Department of Water and Power (“LADWP”) in their Joint Statement of Stipulated Facts and Supporting Evidence (“Joint Statement of Stipulated Facts”) filed on October 5, 2016.

Staff intends to continue conferring with the LADWP with an eye towards making it easier for the Committee to resolve the issues in this appeal and, in particular the biomethane certification issue -- whether it is appropriate for LADWP’s Scattergood, Harbor, Valley, and Haynes facilities to be certified for the Renewables Portfolio Standard (“RPS”) under the RPS Eligibility Guidebook, Third Edition, based on the biomethane procured under LADWP’s 2009 Shell and Atmos Agreements. To this end, if Staff and LADWP are able to agree on material facts that allow the Committee to resolve the biomethane certification issue in a manner acceptable to both parties, then Staff reserves the right to file a supplemental Statement of

¹ TN# 213513

² TN# 213776

Disputed Facts. In this event, it may also be necessary for the parties to file a supplemental joint statement of stipulated facts.

The material facts that follow are listed by pertinent issue along with supporting evidence in CEC Docket No. 16-RPS-02. For convenience, the material facts and supporting evidence are shown in a table format.

II. MATERIAL FACTS AND SUPPORTING EVIDENCE

A. RPS Eligibility of LADWP's BC Hydro Procurement Contracts

Are LADWP's power purchase agreement numbers BP 05-020-A and BP 05-020-B with Powerex Corp for the procurement of electricity from BC Hydro facilities eligible for the RPS under Senate Bill ("SB") X1-2 (Stats. 2011, 1st ex. Sess., ch. 1)?

It is Staff's position that the electricity procured under these agreements is not eligible for the RPS under SBX1-2, because the BC Hydro facilities are not certified by the California Energy Commission ("CEC") as eligible renewable energy resources for the RPS under SBX1-2. Neither LADWP nor Powerex Corp applied to the CEC to certify the BC Hydro facilities for the RPS.³ Furthermore, it is Staff's position that the electricity procured under these agreements is not grandfathered under the provisions of Public Utilities Code sections 399.12(e)(1)(C) or 399.16(d), as amended by SBX1-2.⁴

In addition to the material facts listed in the Joint Statement of Stipulated Facts, the following material facts are pertinent to resolving this issue.

No.	Material Facts – RPS Eligibility of BC Hydro	Supporting Evidence
1.	SB 1078 ("SB 1078") added Article 16 (commencing with section 399.11) to chapter 2.3 of part 1 of Division 1 of the Public Utilities Code ("PUC"), entitled the "California Renewables Portfolio Standard Program."	SB 1078 (Stats. 2002, ch. 516) PUC § 399.11, et seq.

³ Refer to *Response of California Energy Commission Staff to Questions in the Committee's Order of July 27, 2016*, p. 81, TN# 213474.

⁴ Refer to *Response of California Energy Commission Staff to Questions in the Committee's Order of July 27, 2016*, pp. 61-66, TN# 213474.

2.	SB 1078 established the state’s Renewables Portfolio Standard (“RPS”) and required retail sellers, including electrical corporations, electric service providers, and community choice aggregators, to increase their procurement of eligible renewable energy resources.	PUC § 399.11, et seq., as enacted by SB 1078
3.	SB 1078 defined the term “retail seller” to include an electrical corporation, a community choice aggregator, and an electric service provider, but not a local publicly owned electric utility (“POU”).	PUC § 399.12 (b)(1) – (4), as enacted by SB 1078
4.	Senate Bill 107 (“SB 107”) amended the RPS statute for retail sellers and POUs and became effective on January 1, 2007.	SB107 (Stats. 2006, ch.464)
5.	SB 107 amended PUC section 399.15 (b)(1) to accelerate the RPS procurement target for retail sellers, and required retail sellers to increase their total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of retail sales are procured from eligible renewable energy resources by December 31, 2010.	PUC § 399.15(b)(1), as amended by SB 107
6.	SBX1-2 included express language evincing the Legislature’s intent that the law be applied starting January 1, 2011. Specifically, SBX1-2 added PUC sections 399.15(b)(1) and 399.30(b)(1) which establishes requirements for retail sellers and POUs, respectively, to procure minimum quantities of eligible renewable energy resources for each of several multi-year compliance periods, with the first compliance period beginning on January 1, 2011, and ending December 31, 2013. SBX1-2 also added PUC section 399.16(c), which establishes categories of electricity products from eligible renewable energy resources and sets the minimum and maximum amounts of these products that may be procured in a given RPS compliance period for contracts executed after June 1, 2010.	SBX1-2; PUC § 399.15(b)(1), PUC § 399.16(c)(1)-(3), PUC § 399.30 (b)(1)
7.	SBX1-2 repealed PUC Section 387.	Section 12 of SBX1-2 (Stats.2011, first ex. sess., ch. 1, sec. 12)

8.	<p>SBX1-2 amended and renumbered PUC section 399.13 as section 399.25, which required the CEC to do the following:</p> <p>“(a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (e) of Section 399.12.”</p> <p>“(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers and local publicly owned electric utilities, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, to certify renewable energy credits produced by eligible renewable energy resources, and to verify retail product claims in this state or any other state. . . .”</p>	PUC § 399.25(a) and (b), as amended and renumbered by SBX1-2.
9.	<p>SBX1-2 amended Public Resources Code (“PRC”) section 25747 (a), which authorizes the CEC to adopt guidelines governing the CEC’s funding programs under Chapter 8.6 (sections 25740 – 25751 of the PRC) and CEC’s responsibilities under PUC section 399.25. PRC section 25747(a) requires that the CEC adopt the guidelines at a publicly noticed meeting offering all interested parties an opportunity to comment, that substantive changes to the guidelines shall not be adopted without at least 10 days’ written notice to the public, and that the public notice of meetings required by this subdivision shall not be less than 30 days. PRC section 25747(a) further provides that the guidelines adopted pursuant to Chapter 8.6 or PUC section 399.25 are exempt from the formal rulemaking requirements of Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.</p>	PRC § 25747 (a), as amended by SBX1-2. PUC § 399.25, as amended and renumbered by SBX1-2.
10.	<p>Under SBX1-2, the CEC is charged with certifying all “eligible renewable energy resources” that may be used by retail sellers and POUs to meet their RPS procurement requirements under Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1</p>	PUC § 399.25(a), as amended and renumbered by SBX1-2.

	of Division 1 of the PUC.	
11.	Under SBX1-2, the CEC is charged with designing and implementing the accounting system that must be used by retail sellers and POUs to verify their compliance with the RPS under Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the PUC, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of meeting the RPS of this state or any other state, to certify renewable energy credits (“RECs”) produced by eligible renewable energy resources, and to verify retail product claims in this state or any other state.	PUC § 399.25(b), as amended and renumbered by SBX1-2.
12.	On May 9, 2012, the CEC adopted guidelines governing the certification of eligible renewable energy resources for RPS for retail sellers and POUs pursuant to PUC section 399.25, as amended and renumbered by SBX1-2. These guidelines are set forth in the CEC’s RPS Eligibility Guidebook, Fifth Edition (“Fifth Edition Guidebook”).	PRC § 25747(a), as amended by SBX1-2. PUC § 399.25, as amended and renumbered by SBX1-2. CEC RPS Eligibility Guidebook, Fifth Edition, pub. no. CEC-300-2012-002-CMF, TN# 213903.
13.	On May 9, 2012, the CEC adopted guidelines governing the accounting and verification of electricity generation and RECs from eligible renewable energy resources for the RPS for retail sellers and POUs pursuant to PUC section 399.25, as amended and renumbered by SBX1-2. These guidelines are set forth in the Fifth Edition Guidebook.	PRC § 25747(a), as amended by SBX1-2. PUC § 399.25, as amended and renumbered by SBX1-2. Fifth Edition Guidebook, TN# 213903.
14.	The Fifth Edition Guidebook specified criteria for the CEC to certify electrical generation facilities as eligible renewable energy resources for the RPS when those facilities are owned or under contract to POUs. Specifically, the Fifth Edition Guidebook states: “Electricity generation from any facility cannot be counted toward meeting a retail seller’s RPS procurement requirements unless the facility is first certified by the Energy Commission as an eligible renewable energy resource for the RPS. This same requirement applies to RPS procurement for POUs subject to the grace period exception noted below.	Fifth Edition Guidebook, p. 54, TN# 213903.

	Any facility operator who owns a facility or is interested in entering into a contract to generate electricity that will count toward a retail seller's or POU's RPS obligation must certify the facility with the Energy Commission before the generation may be counted toward a retail seller's or POU's RPS obligation."	
15.	<p>The Fifth Edition Guidebook specifies the following: "All generation from facilities certified as eligible for California's RPS must be tracked in the WREGIS [Western Renewable Electricity Generation Information System], with the limited exceptions for 2011-2012 generation noted in this guidebook for facilities serving POUs and generation procured under an AB 920 program prior to October 1, 2012. Applicants for certification must provide the WREGIS Generating Unit Identification number (GU ID) for each certified facility to the Energy Commission by October 1, 2012.⁷¹"</p> <p>Footnote 71 states: "POUs may use the Interim Tracking System (ITS) to report generation occurring through October 2012 that is not tracked in WREGIS; for more information on the ITS, see Section IV: RPS Tracking, Reporting and Verification System. Applicants must register their facilities with WREGIS to receive a WREGIS ID number."</p>	Fifth Edition Guidebook, p. 55, TN# 213903.
16.	<p>The Fifth Edition Guidebook also specifies the following: "Grace Period Exception for Facilities Serving Local Publicly Owned Electric Utilities</p> <p>For generation occurring on or after January 1, 2011, to count toward a POU's RPS procurement obligations from a facility that was not certified by the Energy Commission as RPS-eligible at the time of generation, the Energy Commission must receive an application for RPS certification before October 1, 2012, and subsequently certify the facility as RPS-eligible.⁷³"</p>	Fifth Edition Guidebook, p. 56, TN# 213903.

	Footnote 73 states: “Facilities under contract with or approved by a POU for its RPS before June 1, 2010, are encouraged to apply for certification by October 1, 2012, but are not required to do so.”	
17.	On April 30, 2013, the CEC adopted revisions to its guidelines governing the certification of eligible renewable energy resources for the RPS and the accounting and verification of electricity generation and RECs from eligible renewable energy resources for the RPS for retail sellers and POUs. These guidelines are set forth in the CEC’s RPS Eligibility Guidebook, Seventh Edition (“Seventh Edition Guidebook”).	PRC § 25747(a). PUC § 399.25. CEC RPS Eligibility Guidebook, Seventh Edition, pub. no. CEC-300-2013-005-ED7-CMF, TN# 213251.
18.	The Seventh Edition Guidebook extended the grace period to apply for RPS certification for electrical generation facilities serving POUs. Specifically, the Seventh Edition Guidebook states: <i>“c. Grace Period Exception for Facilities Serving Local Publicly Owned Electric Utilities</i> For generation occurring on or after January 1, 2011, to count toward a POU’s RPS procurement obligations from a facility that was not certified by the Energy Commission as RPS eligible at the time of generation, the Energy Commission must receive an application for RPS certification by December 31, 2013, and subsequently certify the facility as RPS-eligible. ⁸⁰ ” Footnote 80 states: “A facility must be RPS-certified by the Energy Commission before a POU or retail seller may report procurement of its generation toward the POU’s or retail seller’s RPS procurement requirements. In earlier editions of this guidebook, a facility under contract with or approved by a POU for its RPS before June 1, 2010, was encouraged to apply for certification by October 1, 2012.”	Seventh Edition Guidebook, p. 78, TN# 213251.
19.	Neither LADWP nor Powerex Corp has applied to the CEC to certify any of the BC Hydro “facilities,” as designated in LADWP	C. Smith Supplemental Declaration ¶ 5, TN# 213980.

	agreements BP 05-020-A and BP 05-020-B, as an eligible renewable energy resource for the RPS.	
20.	LADWP agreements BP 05-020-A and BP 05-020-B with Powerex Corp for electricity from BC Hydro facilities do not identify specific electrical generation facilities, but instead define “Facilities” to include “hydroelectric generating facilities . . . having a nameplate capacity not exceeding 30 MW; plus . . . any generating facility or facilities designated by Powerex . . . of the type referred to in Part 1 of Appendix A . . .” and “. . . of a type referred to in Part 2 of Appendix A . . .” Part 1 of Appendix A of the agreements identifies the following additional resources: “hydroelectric (30 MW or less nameplate capacity), biomass, landfill gas, and wind.” Part 2 of Appendix A of the agreements identifies the following additional resources: “biodiesel, digester gas, waste gas, solar thermal, geothermal, photovoltaics, fuel cells with renewable fuels and ocean wave technologies.”	TN#212419, p.4 and Appendix A. TN#212420, p. 4 and Appendix A.
21.	SBX1-2 amended the definition of “eligible renewable energy resource” in PUC section 399.12(e)(1) to add the following new resource category: “(A) A small hydroelectric generation unit with a nameplate capacity not exceeding 40 megawatts that is operated as part of a water supply or conveyance system is an eligible renewable energy resource if the retail seller or local publicly owned electric utility procured the electricity from the facility as of December 31, 2005.”	PUC § 399.12(e)(1)(A), as amended by SBX1-2.
22.	SBX1-2 amended the definition of “eligible renewable energy resource” in PUC section 399.12(e)(1) to add the following provisions for certifying eligible renewable energy resources for the RPS if the facility had been approved by a POU prior to June 1, 2010, to satisfy the POU’s renewable energy procurement obligations pursuant to PUC section 387: “(C) A facility approved by the governing	PUC § 399.12(e)(1)(C), as amended by SBX1-2.

	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.”	
23.	PUC Section 399.12(e)(1)(A) evinces the legislature’s intent not to grandfather all resources approved by a POU prior to June 1, 2010, to satisfy renewable energy procurement obligations adopted by the POU pursuant to PUC section 387, since section 399.12(e)(1)(A) establishes a new eligible resource category for the RPS for a “small hydroelectric generation unit with a nameplate capacity not exceeding 40 megawatts that is operated as part of a water supply or conveyance system . . . if the retail seller or local publicly owned electric utility procured the electricity from the facility as of December 31, 2005.”	PUC § 399.12(e)(1)(A), as amended by SBX1-2.
24.	LADWP’s 2005 RPS Policy adopted pursuant to PUC section 387 provided as follows regarding “eligible” resources: “Electricity produced from the following technologies constitute ‘eligible’ resources: biodiesel; biomass; . . . 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.”	LADWP’s 2005 RPS Policy, TN# 212407, Bates No. LA000020.
25.	The “eligible” resource category for “Los Angeles Aqueduct hydro power plants” in LADWP’s 2005 RPS Policy satisfies the requirements in PUC section 399.12(e)(1)(A) for a “small hydroelectric generation unit with a nameplate capacity not exceeding 40 megawatts that is operated as part of a water supply or conveyance system . . if the retail seller or local publicly owned electric utility procured the electricity from the facility as of December 31, 2005.”	PUC § 399.12(e)(1)(A), as amended by SBX1-2.

26.	LADWP treated its Upper Gorge Unit 1, Middle Gorge Unit 1, and Control Gorge Unit 1 as “eligible” resources under LADWP’s 2005 RPS Policy under the category for “Los Angeles Aqueduct hydro power plants.”	LA City Council File 03-2688 - Treatment of Hydro Facilities in LADWP 2005 RPS Policy, Ex. 331, TN# 213391. LADWP's Initial Response to the Committee's Scoping Order dated July 27, 2016, TN# 213475, pp. 5-6.
27.	On August 9, 2012, the CEC adopted revisions to its guidelines governing the certification of eligible renewable energy resources for the RPS and the accounting and verification of electricity generation and RECs from eligible renewable energy resources for the RPS for retail sellers and POUs. These guidelines are set forth in the CEC’s RPS Eligibility Guidebook, Sixth Edition (“Sixth Edition Guidebook”).	PRC § 25747(a). PUC § 399.25. RPS Eligibility Guidebook, Sixth Edition, pub. no. CEC-300-2012-006-CMF, TN# 213904.
28.	The Sixth Edition Guidebook established requirements for certifying a hydroelectric generation unit with a nameplate capacity not exceeding 40 megawatts that is operated as part of a water supply or conveyance system as an eligible renewable energy resource for the RPS in accordance with PUC section 399.12(e)(1)(A), as amended by SBX1-2.	Sixth Edition Guidebook, pp. 22-23, 25-28. TN# 213904. PUC § 399.12(e)(1)(A), as amended by SBX1-2.
29.	The CEC certified LADWP’s Upper Gorge Power Plant - Unit 1 as an eligible renewable energy resource for the RPS under the category for a hydroelectric generation unit with a nameplate capacity not exceeding 40 megawatts that is operated as part of a water supply or conveyance system in accordance with the Sixth Edition Guidebook.	CEC Certificate of RPS Certification for the Upper Gorge Power Plant – Unit 1, TN# 213907.
30.	The CEC certified LADWP’s Middle Gorge Power Plant - Unit 1 as an eligible renewable energy resource for the RPS under the category for a hydroelectric generation unit with a nameplate capacity not exceeding 40 megawatts that is operated as part of a water supply or conveyance system in accordance with the Sixth Edition Guidebook.	CEC Certificate of RPS Certification for the Middle Gorge Power Plant – Unit 1, TN# 213906.
31.	The CEC certified LADWP’s Control Gorge Power Plant - Unit 1 as an eligible renewable energy resource for the RPS under the category for a hydroelectric generation unit	CEC Certificate of RPS Certification for the Control Gorge Power Plant – Unit 1, TN# 213908.

	with a nameplate capacity not exceeding 40 megawatts that is operated as part of a water supply or conveyance system in accordance with the Sixth Edition Guidebook.	
32.	SBX1-2 enacted other provisions in the RPS statute that evince the legislature's intent not to grandfather all resources approved by a POU prior to June 1, 2010, to satisfy renewable energy procurement obligations adopted by the POUs pursuant to PUC section 387. These other provisions in the statute include PUC sections 399.30(h), (i) and (k), which established exemptions from the RPS procurements requirements for specific POU resources.	PUC §§ 399.30(h), (i) and (k), as added by SBX1-2. As a result subsequent amendments to law, PUC §§ 399.30(h), (i) and (k) are now codified in PUC §§ 399.30(g), (h) and (j), respectively.
33.	Subsequent amendments to the RPS statute after SBX1-2 further evince the legislature's intent not to grandfather all resources approved by a POU prior to June 1, 2010, to satisfy renewable energy procurement obligations adopted by the POU pursuant to PUC section 387. Specifically, the legislature enacted Senate Bill 350 ("SB 350"), which, among other things, amended PUC section 399.30 to add a new subdivision (l) to establish a limited RPS procurement exemption for POUs that procure more than 50 percent of their retail sales needs in a given year of a RPS compliance period from large hydroelectric generation facilities that are not eligible renewable energy resources.	SB 350 (Stats. 2016, ch. 547). PUC § 399.30(l), as added by SB 350.
34.	Prior to SBX1-2, at least 21 POUs, including LADWP, implemented RPS policies pursuant to PUC section 387 that considered large hydroelectric generation facilities greater than 30 MW in capacity an eligible resource for the POU's RPS policy.	<i>The Progress of California's Publicly Owned Utilities in Implementing Renewables Portfolio Standards</i> report, December 2008, CEC-300-2008-005, Table 1, pp. 12-13, TN# 212421.
35.	SBX1-2 added PUC section 399.16, which establishes categories of electricity products from eligible renewable energy resources that may be used to satisfy a retail seller's RPS procurement requirements, and establishes minimum and maximum percentages for the amount of these electricity products that may be procured by a retail seller in given	PUC § 399.16(d), as added by SBX1-2.

	compliance period for the RPS.	
36.	<p>PUC section 399.16 also establishes a procurement category for electricity products that were procured pursuant to contracts or ownership agreement executed prior to June 1, 2010. The requirements for this procurement category are prescribed in subdivision (d), which provides as follows:</p> <p>“(d) Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if all of the following conditions are met:</p> <p>(1) The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.</p> <p>(2) For an electrical corporation, the contract has been approved by the commission, even if that approval occurs after June 1, 2010.</p> <p>(3) Any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource. The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years.”</p>	PUC § 399.16(d), as added by SBX1-2.
37.	SBX1-2 added PUC section 399.30(c)(3), which states that “a local publicly owned electric utility shall adopt procurement requirements consistent with [PUC] Section 399.16.”	PUC § 399.30(c)(3), as added by SBX1-2.
38.	PUC section 399.16(d) applies to POUs by virtue of PUC section 399.30(c)(3), which is directly applicable to retail sellers.	PUC §§ 399.16(d), 399.30(c)(3), as added by SBX1-2.
39.	The CEC interpreted the provisions of PUC section 399.16(d) in the context of its rulemaking establishing “Enforcement Procedures For The Renewables Portfolio Standard for Local Publicly Owned Electric Utilities” pursuant to PUC section 399.30(n) as enacted by SBX1-2. These regulations are set forth in California Code of Regulations, title 20, sections 1240 and 3200-3208.	PUC § 399.30(n), as enacted by SBX1-2. CEC Final Statement of Reasons, pp. A-15 – A-17, TN# 213289.

40.	The State of California Office of Administrative Law (“OAL”) considered the CEC’s interpretation of the provisions of PUC section 399.16(d) when OAL reviewed and approved the CEC’s regulations establishing “Enforcement Procedures For The Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.”	OAL Approval, TN# 213297.
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B. RPS Eligibility of Scattergood, Harbor, Valley, and Haynes Facilities Based Biomethane Procured Under the 2009 Shell and Atmos Contracts

Are LADWP’s Scattergood, Harbor, Valley, and Haynes Facilities eligible to be certified as eligible renewable energy resources for the RPS under the CEC’s RPS Eligibility Guidebook, Third Edition (“Third Edition Guidebook”), based on the biomethane procured by LADWP under its 2009 Shell and Atmos Agreements?

It is Staff’s position that the Scattergood, Harbor, Valley, and Haynes Facilities would not have been eligible to be certified for the RPS under the Third Edition Guidebook based on biomethane procured under the 2009 Shell and Atmos Agreements, because of how the requirements in the Third Edition Guidebook were interpreted and applied by Staff to other applicants under the Third Edition Guidebook.⁵ However, unlike other applicants under the Third Edition Guidebook, LADWP may not have been informed of the Third Edition Guidebook requirements or how these requirements were being interpreted and applied by Staff.⁶ Additionally, it is Staff’s position that these facilities are not grandfathered for the RPS under the provisions of Public Utilities Code sections 399.12(e)(1)(C) or 399.16(d), as amended and added by SBX1-2, or grandfathered for the RPS under the provisions of Public Utilities Code sections 399.12.6(a)(1), as added by Assembly Bill (“AB”) 2196 (Stats. 20012, ch. 605).⁷

In addition to the material facts listed in the Joint Statement of Stipulated Facts, the following material facts are pertinent to resolving this issue:

⁵ Refer to *Response of California Energy Commission Staff to Questions in the Committee’s Order of July 27, 2016*, pp. 14-19, TN# 213474.

⁶ Refer to *Response of California Energy Commission Staff to Questions in the Committee’s Order of July 27, 2016*, p. 20, TN# 213474.

⁷ Refer to *Response of California Energy Commission Staff to Questions in the Committee’s Order of July 27, 2016*, pp. 21-38, TN# 213474.

No.	Material Fact – RPS Eligibility of Scattergood, Harbor, Valley and Haynes Facilities Based on the 2009 Shell and Atmos Contracts	Supporting Evidence
41.	Refer to material fact numbers 1 – 4 above regarding the RPS statute as enacted under SB 1078 and SB 1038 and amended by SB 107.	Refer to supporting evidence for material facts numbers 1-4 above.
42.	On March 14, 2007, the CEC adopted requirements in RPS Eligibility Guidebook, Second Edition (“Second Edition Guidebook”) for the RPS certification of electrical generation facilities based on the use of biogas injected into a natural gas transportation pipeline system and delivered into California for use at a facility.	Second Edition Guidebook, TN# 213298, pp. 22 – 23.
43.	The Second Edition Guidebook established requirements for the delivery of biogas injected into a natural gas transportation pipeline system and delivered into California for use in an electrical generation facility. The Second Edition Guidebook states: “RPS-eligible biogas (gas derived from RPS-eligible biomass or digester gas) injected into a natural gas transportation pipeline systems and delivered into California for use in an RPS-certified hybrid facility may result in the generation of RPS-eligible electricity.”	Second Edition Guidebook, TN# 213298, pp. 22-23.
44.	The requirements for the delivery of biogas injected into a natural gas transportation pipeline system and delivered into California for use in an electrical generation facility were based on the fuel “use” condition specified in the definition of an “in-state renewable electricity generation technology” in Public Utilities Code section 383.5.	PUC § 383.5(b)(1), as amended by SB 1038.
45.	In defining an “eligible renewable energy resource” for purposes of the RPS, PUC section 399.12(a) cross referenced the definition of an “in-state renewable electricity generation technology” in PUC section 383.5. Specifically, PUC section 399.12 (a) provided as follows: “For purposes of this article, the following terms have the following meanings: (a)(1) ‘Eligible renewable energy resource’ means an electric generating facility that is one of the following: (1) The facility meets the definition of ‘in-state	PUC § 399.12(a)(1), as added by SB 1078.

	renewable electricity generation technology’ in Section 383.5.”	
46.	On December 19, 2007, the CEC adopted the RPS Eligibility Guidebook, Third Edition (“Third Edition Guidebook”). Except for some minor clarifications, the requirements in the Second Edition Guidebook and Third Edition Guidebook were the same regarding the RPS certification of electrical generation facilities based on the use of biogas injected into a natural gas transportation pipeline system and delivered into California for use in a facility. The Third Edition Guidebook 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.”	Second Edition Guidebook, TN# 213298, pp. 22-23. Third Edition Guidebook, TN# 213291, pp. 20-21
47.	The requirements in the Second Edition Guidebook and Third Edition Guidebook for the delivery of biogas injected into a natural gas transportation pipeline system and delivered into California for use in an electrical generation facility are referred to as the “biomethane delivery requirements” by CEC Staff.	C. Crume Supplemental Declaration ¶ 11, TN# 213981.
48.	CEC Staff applied the “biomethane delivery requirements” in the Third Edition Guidebook to all applicants that applied for RPS certification under the Third Edition Guidebook.	C. Crume Supplemental Declaration ¶ 12, TN# 213981.
49.	CEC Staff certified four facilities for the RPS under the Third Edition Guidebook based on the use of biomethane injected into a natural gas transportation pipeline system. These facilities included the following: 1) Gateway Generating Station, RPS ID 60758F, owned by Pacific Gas and Electric Company (PG&E); 2) Cosumnes Power Plant, RPS ID 60760F, owned by Sacramento Municipal Utility District Financing Authority (SMUD); 3) Los Medanos Energy Center, RPS ID 61048F, owned by Los Medanos Energy Center, LLC (Calpine); and 4) Pastoria Energy Facility, RPS ID 61064F, owned by Pastoria Energy Facility, LLC	C. Crume Supplemental Declaration ¶ 12, TN# 213981. CEC Certificate of RPS certification for Gateway Generating Station, TN# 213978. CEC Certificate of RPS certification for Cosumnes Power Plant, TN# 213969. CEC Certificate of RPS certification for Los Medanos Energy Center, TN# 213965. CEC Certificate of RPS certification for Pastoria Energy Facility, TN# 213964.

	(Calpine).	
50.	CEC Staff determined that PG&E, SMUD, and Calpine satisfied the “biomethane delivery requirements” under the Third Edition Guidebook based on the documentation submitted by these applicants.	C. Crume Supplemental Declaration ¶ 14, TN# 213981.
51.	CEC Staff determined that the documentation submitted by LADWP for the RPS certification of the Scattergood, Harbor, Valley, and Haynes facilities, namely the 2009 Shell and Atmos Agreements, did not show that the biomethane procured under these agreements satisfied the “biomethane delivery requirement” as those requirements were interpreted and applied to the applications of PG&E, SMUD, and Calpine.	C. Crume Supplemental Declaration ¶ 15, TN# 213981.
52.	On July 3, 2013, the CEC certified the Scattergood, Harbor, Valley, and Haynes generating facilities based on the biomethane procured under LADWP’s 2011 Shell contract.	Exhibit 5 to the Executive Director’s December 22, 2015 response to LADWP’s Petition for Reconsideration, TN# 213288.
53.	LADWP’s Firm Transportation Agreement Nos. 1006 and 1706 with Kern River Gas Transportation Company (“KRT”) provided firm transportation delivery service for the gas received at Opal, Wyoming under the 2009 Shell and Atmos Agreements and delivered to SoCal Gas delivery points at Kramer Junction and Wheeler Ridge in Southern California during the entire contract term of both agreements. LADWP’s Firm Transportation Agreement Nos. 1006 and 1706 with KRT did not provide firm transportation delivery service for gas purchased under the Shell and Atmos Agreements from the designated landfills under these agreements to Opal, Wyoming.	LADWP Ex. 41, Ex 46 Bates Nos. LA000601-LA000605 and Bates Nos. LA000617-LA000621, TN# 213050, TN# 213055.
54.	LADWP submitted documentation to the CEC satisfying the “biomethane delivery requirements” as interpreted and applied by CEC Staff under the Third Edition Guidebook for gas procured under the 2009 Shell and Atmos Agreements through a delivery contract path from Opal, Wyoming to the delivery point in California.	C. Crume Supplemental Declaration ¶ 16, TN# 213981.
55.	LADWP did not submit documentation to the CEC to show that it satisfied the “biomethane delivery requirements” as interpreted and applied by CEC Staff under the Third Edition Guidebook	C. Crume Supplemental Declaration ¶ 17, TN# 213981.

	for gas procured under the 2009 Shell and Atmos Agreements from the point of injection at the designated landfills to Opal, Wyoming.	
56.	Refer to material fact number 22 above regarding PUC section 399.12(e)(1)(C), as amended by SBX1-2.	Refer to supporting evidence for material fact numbers 22 above.
57.	Under PUC section 399.12(e)(1)(C), a facility approved by a POU prior to June 1, 2010, for procurement to satisfy renewable energy procurement obligations adopted by the POU pursuant to PUC Section 387 may be certified by the CEC as an eligible renewable energy resource for the RPS “if the facility is a ‘renewable electrical generation facility’ as defined in Section 25741 of the Public Resources Code.”	PUC § 399.12(e)(1)(C), as amended by SBX1-2.
58.	Public Resources Code (“PRC”) Section 25741(a)(1) defines a “renewable electrical generation facility” as follows: “(a) ‘Renewable electrical generation facility’ means a facility that meets all of the following criteria: (1) 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. [....]”	PRC § 25741(a)(1), as amended by SBX1-2.
59.	In order for an electrical generation facility to meet the requirements of PRC section 25741(a)(1) based on the “use” of landfill gas, the CEC determined that the facility must “use” landfill gas as specified by the CEC in the applicable RPS Eligibility Guidebook. For landfill gas delivered as biomethane via the natural gas transportation pipeline system, the RPS Eligibility Guidebook required the gas to meet the “biomethane delivery requirements.”	CEC <i>Phase 1 Decision</i> , pp. 7-8, TN#213294. Second Edition Guidebook, TN# 213298, pp. 22-23. Third Edition Guidebook, TN# 213291, pp. 20-21.
60.	Refer to material fact numbers 35-40 above regarding the provisions of PUC section 399.16(d), as added by SBX1-2.	Refer to supporting evidence for material facts numbers 35-40 above.

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III. CONCLUSION

The material facts listed herein are the facts that Staff believes are necessary to resolve the issues in the subject appeal. These listed facts are in addition to the material facts stipulated by Staff and LADWP in their Joint Statement of Stipulated Facts filed on October 5, 2016.

Dated this 12th day of October 2016

Respectfully submitted,

CALIFORNIA ENERGY COMMISSION

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