

DOCKETED

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Project Title:	Appeal by Los Angeles Department of Water & Power re Renewables Portfolio Standard Certification Eligibility
TN #:	214305
Document Title:	LADWP Proposed Order on Objections To Exclude Evidence - Docket No. 16-RPS-02. 10-31-16
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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: [Proposed] Order on LADWP's
RPS Certification or Eligibility)	Objections Filed Concurrently with Its
)	Notice of Motion and Motion to Exclude
)	Documents and Supplemental
)	Declarations Submitted by CEC Staff
)	

Hearing Officer: Paul Kramer
Subcommittee: Robert B. Weisenmiller,
Ph.D.; David Hochschild

October 31, 2016

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OBJECTIONS TO DOCUMENTS AND DECLARATIONS OF CEC STAFF

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
1.	Supplemental Declaration of Christina Crume (TN213981)	Submitted after September 21, 2016 briefing deadline		
2.	Energy Commission RPS Certificate issued to PG&E's Gateway Generating Station. (TN 213978) (Supplemental Declaration of Christina Crume, ¶ 4, (TN213981))	Submitted after September 21, 2016 briefing deadline; not relevant		
3.	Energy Commission RPS Certificate issued to SMUD's Cosumnes Power Plant. (TN 213969) (Supplemental Declaration of Christina Crume, ¶ 5, (TN213981))	Submitted after September 21, 2016 briefing deadline; not relevant		
4.	Energy Commission RPS Certificate issued to Calpine's Los Medanos Energy Center (TN 213965). (Supplemental Declaration of Christina Crume, ¶ 6, (TN213981))	Submitted after September 21, 2016 briefing deadline; not relevant		
5.	Energy Commission RPS	Submitted after		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	Certificate issued to Calpine's Pastoria Energy Facility. (TN 213964) (Supplemental Declaration of Christina Crume, ¶ 7, (TN213981))	Submitted after September 21, 2016 briefing deadline; not relevant		
6.	Supplemental Declaration of Christina Crume, ¶ 8, (TN213981) p.2. "The Pastoria Energy Facility was certified under the Energy Commission's RPS Eligibility Guidebook, Third Edition, however at the time the certificate was issued the RPS Eligibility Guidebook, Fourth Edition, was already in effect and a certificate under the RPS Eligibility Guidebook, Fourth Edition, was issued to the applicant."	Submitted after September 21, 2016 briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions		
7.	Supplemental Declaration of Christina Crume, ¶ 9, (TN213981) p.2. "The Los Medanos Energy Center was certified under the Energy Commission's RPS	Submitted after September 21, 2016 briefing deadline; not relevant; lacks foundation; hearsay;		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	Eligibility Guidebook, Third Edition, however at the time the certificate was issued the RPS Eligibility Guidebook, Fourth Edition was already in effect and a certificate under the RPS Eligibility Guidebook, Fourth Edition, was issued to the applicant.”	conjecture; unsupported conclusions		
8.	Supplemental Declaration of Christina Crume, ¶ 10, (TN213981) p.2. “The date on RPS Certificates issued by the Energy Commission, to the PG&E, SMUD and Calpine facilities referenced above, indicated as the “Date Issued” represents that date the certificate was printed for Energy Commission Staff signature and may or may not be the date of actual certification.”	Submitted after September 21, 2016 briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions		
9.	Supplemental Declaration of Christina Crume, ¶ 11,	Submitted after September 21, 2016		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	(TN213981) p.2. “Energy Commission Staff refers to the requirements in the Energy Commission’s RPS Eligibility Guidebook, Second Edition (Second Edition Guidebook), and RPS Eligibility Guidebook, Third Edition (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 as the “biomethane delivery requirements.””	briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions		
10.	Supplemental Declaration of Christina Crume, ¶ 12, (TN213981) p.2. “Energy Commission staff applied the “biomethane delivery requirements” in the Third Edition Guidebook to all applicants that applied for RPS certification under the Third Edition Guidebook.”	Submitted after September 21, 2016 briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
11.	Supplemental Declaration of Christina Crume, ¶ 13, (TN213981) p.2. “Energy Commission Staff certified four facilities for the RPS under the Third Edition Guidebook based on the use of biogas injected into a natural gas transportation pipeline system. These facilities are the following: a. Gateway Generating Station, RPS ID 60758A, owned by Pacific Gas and Electric Company (PG&E); b. Cosumnes Power Plant, RPS ID 60760A, owned by Sacramento Municipal Utility District Financing Authority (SMUD); c. Los Medanos Energy Center, RPS ID 61048A, owned by Los Medanos Energy Center, LLC (Calpine); and d. Pastoria Energy Facility, RPS ID 61064A, owned by Pastoria Energy Facility, LLC (Calpine). Energy Commission	Submitted after September 21, 2016 briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	staff subsequently changed the RPS ID numbers for these facilities to end with an “F” instead of an “A.””			
12.	Supplemental Declaration of Christina Crume, ¶ 14, (TN213981) p.3. “Energy Commission Staff determined that the PG&E, SMUD and Calpine facilities referenced above satisfied the “biomethane delivery requirements” under the Third Edition Guidebook based on the documentation submitted by the applicants.”	Submitted after September 21, 2016 briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions		
13.	Supplemental Declaration of Christina Crume, ¶ 15, (TN213981) p.3. “Energy Commission 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	Submitted after September 21, 2016 briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	Agreements, did not show that the biomethane procured under these agreements satisfied the “biomethane delivery requirements” as those requirements were interpreted and applied to the applications of PG&E, SMUD, and Calpine.”			
14.	Supplemental Declaration of Christina Crume, ¶ 16, (TN213981) p.3. “LADWP submitted documentation to the Energy Commission satisfying the biomethane delivery requirements as interpreted and applied by Energy Commission Staff under the Third Edition Guidebook for gas procured under the 2009 Shell and Atmos Agreement through a delivery contract path from Opal, Wyoming to the delivery point in California.”	Submitted after September 21, 2016 briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions		
15.	Supplemental Declaration of Christina Crume, ¶ 17,	Submitted after September 21, 2016		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	(TN213981) p.3. “LADWP did not submit documentation to the Energy Commission to show it satisfied 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 Agreement from the point of injection at the designated landfills to Opal, Wyoming.”	briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions		
16.	Calpine EIF KC biogas Purchase Agreement 12-22-2010 (TN 213360) received from Calpine in response to an April 2012 Energy Commission biomethane data request. (Declaration of Christina Crume, ¶ 4, (TN213755))	Not relevant; lacks foundation; hearsay; unable to authenticate as to execution or delivery since it is a third party contract where the CEC is not a party to the agreement; conjecture; unsupported conclusions		
17.	CEC ED Denial of LADWP's Petition for Reconsideration dated December 22, 2015.” TN213288. Declaration of Christina Crume, ¶	Duplicative of TN213427		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	6, (TN213755))			
18.	Declaration of Christina Crume, ¶ 10, (TN213755) p.2. “Exhibit docketed as TN 213465 is a true and correct copy of the INGAA Definitions printed from the INGAA website on August 31, 2016.”	Lacks foundation; hearsay; unsupported conclusions or opinions		
19.	Declaration of Christina Crume, ¶ 11, (TN213755) p.2. “Exhibit docketed as TN 213248 is a true and correct copy of the LADWP Biomethane related Petition for Reconsideration dated March 28, 2014 received by the Energy Commission from LADWP.”	Duplicative of TN213426		
20.	Declaration of Christina Crume, ¶ 12, (TN213755) p.2. “Exhibit docketed as TN 213342 is a true and correct copy of the LADWP Transaction Confirmation with Atmos Energy Marketing Effective 9-1-2009 received by the Energy Commission from	Lacks foundation; hearsay; unable to authenticate as to execution or delivery since it is a third party contract where the CEC is not a party to the agreement; conjecture;		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	LADWP.”	unsupported conclusions		
21.	Declaration of Christina Crume, ¶ 13, (TN213755) p.2. “Exhibit docketed as TN 213343 is a true and correct copy of the LADWP Transaction Confirmation with Shell Energy N. America, LP Effective 8-1-2009 received by the Energy Commission from LADWP.”	Lacks foundation; hearsay; unable to authenticate as to execution or delivery since it is a third party contract where the CEC is not a party to the agreement; conjecture; unsupported conclusions		
22.	Declaration of Christina Crume, ¶ 15, (TN213755) p.2. “Exhibit docketed as TN 213388 is a true and correct copy of the Map with Wyoming received by the Energy Commission from LADWP at in-person meeting on February 23, 2016.”	Lacks foundation; hearsay; unsupported conclusions		
23.	“PG&E Microgy Contract executed February 2007 received by the Energy Commission from PG&E in response to an April 2012 Energy Commission biomethane data request.” TN	Not relevant; lacks foundation; hearsay; unable to authenticate as to execution or delivery since it is a third party contract where the CEC		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	213345 (Declaration of Christina Crume, ¶ 16, (TN213755))	is not a party to the agreement; conjecture; unsupported conclusions		
24.	Declaration of Christina Crume, ¶ 17, (TN213755) p.2. “Exhibit docketed as TN 213467 is a true and correct copy of the Energy Commission Renewables Portfolio Standard 2008-2010 Procurement Verification report, CEC-300-2013-010-CMF, November 2013.”	Not relevant; lacks foundation; hearsay; unsupported conclusions (declaration fails to identify procurement verification duties)		
25.	“SMUD Shell Transaction Confirmation dated 3-30-2009 received by the Energy Commission from SMUD in response to an April 2012 Energy Commission biomethane data request.” (TN 213364) (Declaration of Christina Crume, ¶ 19, (TN213755))	Not relevant; lacks foundation; hearsay; unable to authenticate as to execution or delivery since it is a third party contract where the CEC is not a party to the agreement; conjecture; unsupported conclusions		
26.	Declaration of Christina Crume, ¶ 20, (TN213755) p.3. “Exhibit docketed as TN 213466 is a true and correct copy of the Spectra	Lacks foundation; hearsay; unsupported conclusions or opinions		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	Energy definitions printed from the Spectra Energy website on August 31, 2016.”			
27.	“Supporting Letters from PG&E, Shell, and Others received by the Energy Commission from PG&E, Shell, and Calpine in connection with the applications for RPS certification.” TN 213394. (Declaration of Christina Crume, ¶ 21, (TN213755) p.3.)	Lacks foundation; hearsay; unable to authenticate third party letters - where only one letter is addressed to the CEC Staff; conjecture; unsupported conclusions or opinions		
28.	Declaration of Christina Crume, ¶ 22, (TN213755) p.3. “The Renewables Portfolio Standard unit has not received any communication from a POU using certified biomethane indicating that meeting the RPS biomethane use requirement prevented them from meeting Federal Energy Regulatory Commission natural gas pipeline transportation requirements.”	Not relevant; lacks foundation; hearsay; speculation; conjecture; unsupported conclusions or opinions		
29.	Supplemental Declaration of	Submitted after		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	Courtney Smith in its entirety	September 21, 2016 briefing deadline		
30.	Supplemental Declaration of Courtney Smith, ¶ 5, (TN213980) p.1. “Neither the Los Angeles Department of Water and Power (LADWP) nor Powerex Corp has applied to the CEC to certify any of the BC Hydro “facilities,” as designated in LADWP contracts BP 05-020-A (TN 212419) and BP 05-020-B (TN 212420), as an eligible renewable energy resource for the RPS.”	Submitted after September 21, 2016 briefing deadline; Not relevant; lacks foundation; hearsay; speculation; conjecture; unsupported conclusions or opinions		
31.	CEC’s adopted RPS Eligibility Guidebook, Sixth Edition, CEC-300-2012-006-CMF. (TN 213904). (Supplemental Declaration of Courtney Smith, ¶ 6, (TN213980))	Submitted after September 21, 2016 briefing deadline; Not relevant		
32.	Certificate 60758A Gateway Generating Station (TN213066)	Not relevant; Lacks foundation; hearsay		
33.	Certificate 60760A Consumnes Power Plant (TN213963)	Not relevant; Lacks foundation; hearsay		

California Energy Commission Staff Statement of Disputed Facts

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
Disputed Material Facts – RPS Eligibility of BC Hydro (Numbers correspond to the numbering of the Staff’s disputed facts)				
34.	1. and 41. 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.”	Legal statements and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”		
35.	2. and 41. 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.	Legal statements and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”		
36.	3. and 41. SB 1078 defined the	Legal statements and		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	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”).	conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”		
37.	4. and 41. Senate Bill 107 (“SB 107”) amended the RPS statute for retail sellers and POU’s and became effective on January 1, 2007.	Legal statements and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”		
38.	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	Legal statements and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;” not relevant		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	energy resources by December 31, 2010.			
39.	6. SBX1-2 included express language evincing the Legislature's intent that the law be applied starting January 1, 2011.	Unsupported legal conclusions or opinions; hearsay; lacks foundation		
40.	6. 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),	Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence."		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	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.			
41.	7. SBX1-2 repealed PUC Section 387.	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”		
42.	8. SBX1-2 amended and renumbered PUC section 399.13 as section 399.25, which required the CEC to do the following: “(a) Certify eligible renewable energy resources that it determines meet the criteria described in	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	<p>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>			
43.	9. SBX1-2 amended Public Resources Code (“PRC”) section 25747 (a), which authorizes the CEC to adopt guidelines	Legal argument and conclusions which are for briefing not for “disputed facts” to be		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	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	ruled on as "evidence."		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	rulemaking requirements of Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.			
44.	10. 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 of Division 1 of the PUC.	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”		
45.	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	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	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.			
46.	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	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	CEC's RPS Eligibility Guidebook, Fifth Edition ("Fifth Edition Guidebook").			
47.	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.	Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence."		
48.	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	Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence."		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	<p>Fifth Edition Guidebook states:</p> <p>“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 POU’s subject to the grace period exception noted below. 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</p>			

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	POU's RPS obligation."			
49.	15. 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" Footnote 71 states: "POUs may use the Interim	Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence."		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	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.”			
50.	16. The Fifth Edition Guidebook also specifies the following: “Grace Period Exception for Facilities Serving Local Publicly Owned Electric Utilities 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	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	<p>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> <p>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.”</p>			
51.	<p>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</p>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”</p>		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	sellers and POUs. These guidelines are set forth in the CEC's RPS Eligibility Guidebook, Seventh Edition ("Seventh Edition Guidebook").			
52.	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: "c. Grace Period Exception for Facilities Serving Local Publicly Owned Electric Utilities 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,	Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence."		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	<p>the Energy Commission must receive an application for RPS certification by December 31, 2013, and subsequently certify the facility as RPS-eligible.⁸⁰</p> <p>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.”</p>			
53.	19. Neither LADWP nor Powerex Corp has applied to the CEC to certify any of the BC Hydro	Legal argument and conclusions which are for briefing not for		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	“facilities,” as designated in LADWP agreements BP 05-020-A and BP 05-020-B, as an eligible renewable energy resource for the RPS.	“disputed facts” to be ruled on as “evidence;” conjecture; unsupported conclusions or opinions		
54.	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	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;” conjecture; unsupported conclusions or opinions		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	<p>Appendix A of the agreements identifies the following additional resources: “hydroelectric (30 MW or less nameplate capacity), biomass, landfill gas, and wind.”</p> <p>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.”</p>			
55.	<p>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:</p> <p>“(A) A small hydroelectric generation unit with a nameplate capacity not exceeding 40</p>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”</p>		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	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.”			
56.	22. and 56. 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	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	governing board of a local publicly owned electric utility prior to June 1, 2010, for procurement to satisfy renewable energy procurement obligations adopted pursuant to former Section 387, shall be certified as an eligible renewable energy resource by the Energy Commission pursuant to this article, if the facility is a ‘renewable electrical generation facility’ as defined in Section 25741 of the Public Resources Code.”			
57.	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	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;” lacks foundation; hearsay		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	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.”			
58.	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	Not relevant; Lacks foundation; unsupported conclusion		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	of a water supply or conveyance system in accordance with the Sixth Edition Guidebook.			
59.	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.	Not relevant; Lacks foundation; unsupported conclusion		
60.	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 with a nameplate capacity not exceeding 40	Not relevant; Lacks foundation; unsupported conclusion		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	megawatts that is operated as part of a water supply or conveyance system in accordance with the Sixth Edition Guidebook.			
61.	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.”	Conjecture; lacks foundation; conclusions or opinions; hearsay; not relevant		
62.	32. SBX1-2 enacted other provisions in the RPS statute that	Legal argument and conclusions which are		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	<p>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.</p>	<p>for briefing not for “disputed facts” to be ruled on as “evidence;” lacks foundation; hearsay</p>		
63.	<p>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</p>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;” lacks foundation; hearsay</p>		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	<p>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.</p>			
64.	<p>35. and 60. 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</p>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence”</p>		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	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 compliance period for the RPS.			
65.	<p>36. and 60. 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.</p> <p>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</p>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence”</p>		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	<p>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</p>			

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	more years.”			
66.	37. and 60. 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.”	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence”		
67.	38. and 60. PUC section 399.16(d) applies to POUs by virtue of PUC section 399.30(c)(3), which is directly applicable to retail sellers.	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence”		
68.	39. and 60. 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	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence”		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	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.			
69.	40. and 60. 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.”	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence”		
70.	42. On March 14, 2007, the CEC adopted requirements in RPS Eligibility Guidebook, Second	Legal argument and conclusions which are for briefing not for		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	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.	“disputed facts” to be ruled on as “evidence”		
No.	Material Fact – RPS Eligibility of Scattergood, Harbor, Valley and Haynes Facilities Based on the 2009 Shell and Atmos Contracts	<u>Grounds for Objection</u>		
71.	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.	Not relevant; Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence”		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	The Second Edition Guidebook states: “RPS-eligible biogas (gas derived from RPSeligible biomass or digester gas) injected into a natural gas transportation pipeline systems and delivered into California for use in an RPScertified hybrid facility may result in the generation of RPS-eligible electricity.”			
72.	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.	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;” conjecture; unsupported conclusions or opinions		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
73.	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 renewable electricity generation technology’ in Section 383.5.”	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;” not relevant; unsupported conclusions or opinions		
74.	46. On December 19, 2007, the CEC adopted the RPS Eligibility	Legal argument and conclusions which are		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	<p>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-</p>	<p>for briefing not for “disputed facts” to be ruled on as “evidence;” not relevant; unsupported conclusions or opinions</p>		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	eligible electricity.”			
75.	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.	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;” unsupported conclusions or opinions; based on declaration submitted after 9-21-16 briefing deadline		
76.	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.	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;” unsupported conclusions or opinions; based on declaration submitted after 9-21-16 briefing deadline		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
77.	<p>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 (Calpine).</p>	Not relevant; based on declaration submitted after 9-21-16 briefing deadline		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
78.	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.	Not relevant; argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;” based on declaration submitted after 9-21-16 briefing deadline		
79.	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	Not relevant; argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;” based on declaration submitted after 9-21-16 briefing deadline		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	PG&E, SMUD, and Calpine			
80.	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 for gas procured under the 2009 Shell and Atmos Agreements from the point of injection at the designated landfills to Opal, Wyoming.	Argument, conclusions and opinions which are for briefing not for “disputed facts” to be ruled on as “evidence;” based on declaration submitted after 9-21-16 briefing deadline.		
81.	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	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;”		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	for the RPS “if the facility is a ‘renewable electrical generation facility’ as defined in Section 25741 of the Public Resources Code.”			
82.	<p>58. Public Resources Code (“PRC”) Section 25741(a)(1) defines a “renewable electrical generation facility” as follows:</p> <p>“(a) ‘Renewable electrical generation facility’ means a facility that meets all of the following criteria:</p> <p>(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</p>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence”</p>		

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Sustained:</u>	<u>Denied:</u>
	thermal, or tidal current, and any additions or enhancements to the facility using that technology. [....]”			