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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

Docket No.: 16-RPS-02

JOINT STATEMENT REGARDING POINTS OF AGREEMENT

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December 9, 2016

**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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JOINT STATEMENT REGARDING POINTS OF AGREEMENT

California Energy Commission Staff (Staff) and the City of Los Angeles, acting by and through the Department of Water and Power, a municipal corporation (LADWP and collectively with Staff the Parties) respectfully submits their Joint Statement Regarding Points of Agreement (Joint Statement) in CEC Docket No. 16-RPS-02. The Joint Statement is submitted in response to the Committee report of November 22, 2016, *Summary of Committee Report After November 22, 2016, Closed Session* (Report),¹ which encouraged the Parties to continue discussions to see if they have additional points of agreement. The Report asked the Parties to file a joint written summary of any agreements or statement that none have been reached by no later than December 6, 2016. The Committee granted an extension of time to file the Joint Statement until December 9, 2016.²

The Parties conferred to discuss points of agreement and opportunities to narrow and order the scope of issues before the Committee. The Parties do not agree on how the Committee should resolve the main legal issues, but the Parties agree that the Committee should prioritize the order in which the Committee addresses certain issues.

I. Proposed Order for Addressing Legal Issues.

The Parties agree that the Committee should first decide the threshold legal question regarding the interpretation of the “grandfathering” provisions under Senate Bill X1-2 (SBX1-2) and Assembly Bill 2196 (AB 2196). Specifically, the Committee should address the interpretation of Public Utilities Code sections 399.12(e)(1)(c), 399.12.6, and 399.16(d), and determine the applicable rules and requirements for determining whether, if at all, LADWP’s

¹ TN 214546.

² TN 214646

resources procured prior to June 1, 2010 should count toward the Renewables Portfolio Standard (RPS) under SBX1-2 and/or AB 2196. The Committee's July 27, 2016 Scoping Order (Scoping Order)³ requested information and responses concerning these issues in questions 2, 3, 4, and 5.

If the Committee agrees with LADWP's statutory interpretation, then the Committee would need to determine whether LADWP's procurement and use of biomethane under the 2009 Shell and Atmos Agreements and the generation procured under the BC Hydro power purchase agreements (PPAs) satisfied the procurement and eligibility rules established by the City of Los Angeles and under LADWP's RPS Policy adopted pursuant to former Public Utilities Code section 387. The Scoping Order requested information and responses concerning these issues in questions 2, 3, 4, and 5.

A ruling in favor of LADWP on the statutory-interpretation questions regarding the grandfathering of LADWP's resources would also require that the Committee calculate the amount of renewable energy, if any, that should count in full toward LADWP's RPS obligations for Compliance Period One (CP1) as a result of LADWP's use of biomethane under the 2009 Shell and Atmos Agreements for generation at LADWP's in-basin generating facilities and the procurement of generation under the BC Hydro PPAs, and the process for carrying out this calculation. The Scoping Order requested information and responses concerning this issue in Question 6. The Committee would need to address the other issues Staff raised regarding the approval of these resources in response to Question 7 of the Scoping Order and LADWP's response to those other issues.

The Parties agree that a ruling in favor of LADWP on the grandfathering issue would negate the need for the Committee to determine whether the LADWP facilities using biomethane under the 2009 Shell and Atmos Agreements satisfied the eligibility criteria under the Third or Fourth Editions of the RPS Eligibility Guidebook or the facilities from which LADWP procured generation under the BC Hydro PPAs satisfied the eligibility criteria under the Second Edition RPS Eligibility Guidebook. To address this point the Committee would need to consider the issues raised by Staff in response to Question 7 of the Scoping Order and LADWP's response to those issues.

If, however, the Committee agrees with Staff's statutory interpretation, then the Committee would need to address a different set of legal issues. First, the Committee would

³ TN 212485.

need to determine the RPS Eligibility Guidebook requirements applicable for the CEC to certify the use of biomethane procured under the 2009 Shell and Atmos Agreements at LADWP's Scattergood, Harbor, Valley, and Haynes Generating facilities and the Powerex generating facilities designated under the BC Hydro PPAs for the generation procured in 2011. The Committee would next need to determine whether these facilities satisfied the applicable RPS Eligibility Guidebook requirements and should be certified as "eligible renewable energy resources." The Scoping Order requested information and responses concerning these issues in Questions 1, 2, 3, 4, 5, and 6. The Committee would also need to address the other issues raised by LADWP in response to Question 7 of the Scoping Order and Staff's response to those other issues.

If the Committee found that LADWP satisfied the applicable RPS Eligibility Guidebook requirements to certify the facilities, then the Committee would need to determine the number of eligible RECs generated from the use of biomethane under the 2009 Shell and Atmos Agreements and procured from generation under BC Hydro PPAs that should count toward LADWP's RPS requirements for CP1. The Scoping Order requested information and responses concerning this issue in Question 6.

II. Additional Points of Agreement Regarding Public Utilities Code Section 399.12.6.

The Parties have reached an agreement on the certain issues relating to AB 2196 and Public Utilities Code Section 399.12.6(a). Section 399.12.6(a)(1) states:

Any procurement of biomethane delivered through a common carrier pipeline under a contract executed by a retail seller or local publicly owned electric utility and reported to the Energy Commission prior to March 29, 2012, and otherwise eligible under the rules in place as of the date of contract execution shall count toward the procurement requirements established in this article, under the rules in place at the time the contract was executed, including the Fourth Edition of the Energy Commission's Renewables Portfolio Standard Eligibility Guidebook, provided that those rules shall apply only to resources that are producing biomethane and injecting it into a common carrier pipeline on or before April 1, 2014.

The Parties agree that LADWP reported the procurement of biomethane under its 2009 Shell and Atmos Agreements to the CEC prior to March 29, 2012. The procurement of this biomethane was reported to the CEC in connection with LADWP's application for RPS certification of the Scattergood, Harbor, Valley, and Haynes Generating facilities. LADWP reported the sources of biomethane and the amount of biomethane procured under the 2009 Shell and Atmos Agreements.

The Parties agree that the biomethane procured under the Shell and Atmos Agreements is produced from landfill gas that meets the definition of biomethane under Public Resources Code section 25741.

The Parties agree that the biomethane procured under the 2009 Shell and Atmos Agreements was generated from landfills that were producing the gas and injecting it into a common carrier pipeline on or before April 1, 2014.

As noted above, the Parties dispute the applicable "rules in place as of the date of contract execution" that determine the RPS-eligibility of biomethane-based procurement under Section 399.12.6(a)(1). In the event, however, that the Committee determines that applicable rules in place as of the date of contract execution under Section 399.12.6(a)(1) refers to the CEC's RPS Eligibility Guidebook requirements, then the Parties agree to the following:

- The CEC adopted the Third Edition RPS Eligibility Guidebook on December 19, 2007. The Third Edition Guidebook was in effect when LADWP executed the 2009 Shell and Atmos Agreements.
- The Third Edition Guidebook includes the following requirements for pipeline biomethane: "RPS-eligible biogas . . . injected into a natural gas transportation pipeline system and delivered into California for use in an RPS-certified multi-fuel facility may result in generation of RPS-eligible electricity" and "[t]he gas must be injected into a natural gas pipeline system that is either within the WECC region or interconnected to a natural gas pipeline system in the WECC region that delivers gas into California."
- The applicable standard for delivery of biomethane under the Third Edition Guidebook is the primary disputed issue between the Parties regarding whether or not LADWP satisfied the requirements under the Third Edition Guidebook.
- If the Committee determines that the biomethane procured by LADWP under the 2009 Shell and Atmos Agreements satisfied the biomethane requirements under the Third

Edition Guidebook, the Parties agree that the generation from the use of the biomethane procured under the 2009 Shell and Atmos Agreements at LADWP's Scattergood, Harbor, Valley and Haynes Generating facilities should count in full for the RPS.

- Staff has not verified the amount of generation from the Scattergood, Harbor, Valley and Haynes Generating facilities based on the use of biomethane procured under the 2009 Shell and Atmos Agreements. To continue its review of the generation from these facilities that may be eligible for the RPS, Staff needs access to the confidential data that LADWP has submitted in the Appeal as LADWP Exhibits 348, 349, 350 and 355, and docketed as TN 213666, TN 213662, TN 213663, and TN 213665, respectively. LADWP and Staff will file a separate request to the Committee containing a stipulation and proposed order regarding the conditions and requirements for the limited disclosure of this confidential information to Staff as necessary for the verification of the generation and in accordance with the CEC's rules and regulations for confidential information.
- The Scattergood, Harbor, Valley and Haynes generating facilities are currently certified for the RPS by the CEC based on the use of biomethane procured under LADWP's 2011 Shell contract.

Staff and LADWP respectfully submit this Joint Statement and hope that the proposed structure for addressing the legal issues and the additional agreements contained herein will assist the Committee with its forthcoming proposed Decision. The Parties are amenable to meeting and conferring on additional areas of agreement after the Committee renders its Decision.

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Dated this 9th of December 2016

Respectfully submitted,

/S/

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