

DOCKETED

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

IN THE MATTER OF:

Docket No. 16-RPS-02

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

**COMMITTEE RULINGS AND ORDERS REGARDING
LADWP EVIDENTIARY MOTION**

On October 31, 2016, the Los Angeles Department of Water and Power (LADWP), Appellant in this proceeding, filed a Motion to Exclude Documents and Supplemental Declarations Submitted by CEC Staff (Motion).¹ Staff filed its response to the Motion on November 14.² The Committee conducted a hearing on the Motion on December 15, 2016 and took the Motion under submission.³

Before turning to LADWP's specific objections, we describe the current posture of this proceeding and summarize the applicable law.

On July 27, 2016, the Committee issued a Committee Scoping Order⁴ which, among other things, solicited responses to several questions from the parties. Initial and reply responses were filed by Energy Commission Staff and LADWP on September 1, 2016,⁵ and September 21, 2016,⁶ respectively. In addition, the parties were required to file a joint statement of stipulated facts and individual statements of disputed facts, which were received on October 5, 2016,⁷ and October 12, 2016.⁸

¹ TN 214304

² TN 214486

³ To allow sufficient time for the hearing of the Motion and preparation of this ruling, the Committee extended the deadline for a decision of the Motion under Title 20, Cal. Code Regs., §1211.5(a) until December 23, 2016 (TN 214450) and then to January 31, 2017 (TN 215085).

⁴ TN 212485

⁵ TNs 213474, 213475

⁶ TNs 213757, 213758

⁷ TN 213910

⁸ TNs 213985, 213986

Our July 27 Order described the process going forward as follows:

The Committee reviewed the parties' status reports for the July 13 Committee Status Conference. In those reports and the related discussions during the Status Conference, the parties recommend a two-phase approach to resolving the appeals. First, the Committee would decide the legal issues presented—which laws apply and what they require. Second, the Committee would apply those identified laws and standards to the facts of the appeals. Upon further review, for purposes of efficiency, we believe that it is appropriate at this time to ask for the identification of various facts which would be required to satisfy specified legal provisions (see questions 2.a. and 5.a., below). Following receipt of the parties' responses, we will determine whether evidentiary hearings or additional information are required prior to our determination of the legal issues. Similarly, although the Committee Schedule contains placeholder entries for "Phase II" events, we may subsequently determine that no such events are necessary.⁹

Under the Energy Commission's regulations, parties may move to exclude information from consideration on the ground that it is not relevant, is duplicative of information already in the record, or on another basis. If the presiding member grants such a motion, the information shall be excluded from the hearing record. While the hearing need not be conducted according to technical rules relating to evidence and witnesses, questions of relevance and the inclusion of information into the hearing record shall be decided by the presiding member after considering fairness to the parties, hearing efficiency, and adequacy of the record. (Title 20, Cal. Code Regs., §1212(b)(2).)

Committee findings may be based on evidence that is the sort of information on which responsible persons are accustomed to relying on in the conduct of serious affairs. Such evidence does not include, among other things, speculation, argument, conjecture, and unsupported conclusions or opinions. (Title 20, Cal. Code Regs., §1212(c)(2).)

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions. (Title 20, Cal. Code Regs., § 1212(c)(3).)

"Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact. (Evid. Code, § 140.) Legal arguments are not "evidence" nor are they "facts." Both parties provided legal arguments in their respective statements of disputed facts and supporting evidence. The statements of disputed facts were solicited for the purpose of determining if the Committee needs to conduct a hearing to take evidence on any facts in dispute which are relevant to the determination of the legal issues. That determination will be made following the parties' review and comment on the Committee's tentative decision on the legal questions presented in this proceeding.

⁹ TN 212485, p2

“Relevant evidence” means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code, § 210.)

OBJECTIONS TO DOCUMENTS AND DECLARATIONS OF CEC STAFF

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Ruling</u>
1.	Supplemental Declaration of Christina Crume (TN213981)	Submitted after September 21, 2016 briefing deadline	Overruled. The Committee did not articulate a date upon which the record was closed. While the Committee did request that the parties use their responses to the Committee’s Questions as an opportunity to present their full cases, the Committee left open the possibility that further evidence may be necessary.
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	Overruled as to timing. Overruled as to relevance. Relevant to how staff interpreted and applied the eligibility requirements of the Third Edition Guidebook. Relevant to disprove LADWP’s claim that the Energy Commission’s biomethane delivery requirements conflict with FERC regulations.

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	Overruled as to timing. Overruled as to relevance. Relevant to how staff interpreted and applied the eligibility requirements of the Third Edition Guidebook. Relevant to disprove LADWP's claim that the Energy Commission's biomethane delivery requirements conflict with FERC regulations.
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	Overruled as to timing. Overruled as to relevance. Relevant to disprove LADWP's claim that the Energy Commission's biomethane delivery requirements conflict with FERC regulations.
5.	Energy Commission RPS Certificate issued to Calpine's Pastoria Energy Facility. (TN 213964) (Supplemental Declaration of Christina Crume, ¶ 7, (TN213981))	Submitted after Submitted after September 21, 2016 briefing deadline; not relevant	Overruled as to timing. Overruled as to relevance. Relevant to disprove LADWP's claim that the Energy Commission's biomethane delivery requirements conflict with FERC regulations.

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	Sustained. Conjecture: The Certificate says the Pastoria Energy Facility was certified under the criteria established in the 4 th Edition Guidebook. The statement's claim that the Pastoria Energy Facility was certified under the 3 rd Edition Guidebook is not established by this statement or the RPS Certification (TN 213964.)
7.	Supplemental Declaration of Christina Crume, ¶ 9, (TN213981) p.2. "The Los Medanos Energy Center 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	Sustained. Conjecture: The Certificate says the Los Medanos Energy Facility was certified under the criteria established in the 4 th Edition Guidebook. The statement's claim that the Los Medanos Energy Facility was certified under the 3 rd Edition Guidebook is not established by this statement or the RPS Certification (TN 213965.)
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	Sustained. Conjecture: The certificate does not provide this information. The statement lacks foundation.

9.	Supplemental Declaration of Christina Crume, ¶ 11, (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.""	Submitted after September 21, 2016 briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions	Overruled. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. To the extent this statement reflects Ms. Crume's knowledge of Energy Commission custom and practice in determining certification eligibility and provides an example of such custom and practice, the information has sufficient foundation and is relevant. Moreover, allowing this statement is not prejudicial to LADWP.
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	Overruled. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. To the extent this statement reflects Ms. Crume's knowledge of Energy Commission custom and practice in determining certification eligibility and provides an example of such custom and practice, the information has sufficient foundation and is relevant. The statement supplements staff's briefs and explains why staff denied certification of LADWP's Biomethane Agreements.

11.	<p>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 staff subsequently changed the RPS ID numbers for these facilities to end with an “F” instead of an “A.”</p>	<p>Submitted after September 21, 2016 briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions</p>	<p>Overruled as to Gateway and Cosumnes. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission’s evidentiary standards. To the extent this statement reflects Ms. Crume’s knowledge of Energy Commission custom and practice in determining certification eligibility and provides an example of such custom and practice, the information has sufficient foundation and is relevant. The statement supplements staff’s briefs and explains why staff denied certification of LADWP’s Biomethane Agreements. Also relevant to disprove LADWP’s claim that the Energy Commission’s biomethane delivery requirements conflict with FERC regulations.</p> <p>Sustained as to Pastoria and Los Madanos. Conjecture: The certificates for Pastoria and Los Medanos say the facilities were certified under the criteria established in the 4th Edition Guidebook. Ms. Crume’s statements that these facilities were certified under the 3rd Edition Guidebook are not established by this statement or the RPS Certifications (TN 213964 and TN 213965.)</p>
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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	See 11.
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 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."	Submitted after September 21, 2016 briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions	Overruled. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. To the extent this statement reflects Ms. Crume's knowledge of Energy Commission custom and practice in determining certification eligibility and provides an example of such custom and practice, the information has sufficient foundation and is relevant. The statement supplements staff's briefs and explains why staff denied certification of LADWP's Biomethane Agreements. Moreover, allowing this statement is not prejudicial to LADWP.

14.	<p>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."</p>	<p>Submitted after September 21, 2016 briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions</p>	<p>Overruled. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. To the extent this statement reflects Ms. Crume's knowledge of Energy Commission custom and practice in determining certification eligibility and provides an example of such custom and practice, the information has sufficient foundation and is relevant. The statement supplements staff's briefs. Moreover, allowing this statement is not prejudicial to LADWP.</p>
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15.	Supplemental Declaration of Christina Crume, ¶ 17, (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."	Submitted after September 21, 2016 briefing deadline; not relevant; lacks foundation; hearsay; conjecture; unsupported conclusions	Overruled. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. To the extent this statement reflects Ms. Crume's knowledge of Energy Commission custom and practice in determining certification eligibility and provides an example of such custom and practice, the information has sufficient foundation and is relevant. The statement supplements staff's briefs and explains why staff denied certification of LADWP's Biomethane Agreements. Moreover, allowing this statement is not prejudicial to LADWP.
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	Overruled. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. The statement offers the document as a true and correct copy of what the Energy Commission received, not for the authenticity of the contract.

17.	CEC ED Denial of LADWP's Petition for Reconsideration dated December 22, 2015." TN213288. Declaration of Christina Crume, ¶ 6, (TN213755))	Duplicative of TN213427	Overruled. There is no harm to the parties by having two copies of the same document in the record.
18.	Declaration of Christina Crume, ¶ 10, (TN213755) p.2. "Exhibit docketed as TN213465 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	Overruled. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. The definitions are relevant to explain staff's understanding of industry standard definitions. Moreover, allowing this statement is not prejudicial to LADWP.
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	Overruled. There is no harm to the parties by having two copies of the same document in the record.

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 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	Overruled. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. The statement offers the document as a true and correct copy of what the Energy Commission received, not for the authenticity of the contract. LADWP provides this same document at TN213037.
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	Overruled. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. The statement offers the document as a true and correct copy of what the Energy Commission received, not for the authenticity of the contract. LADWP provides this same document at TN213036.

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	Overruled. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. The statement supplements staff's brief – the map was referred to in staff's brief and shows Opal, Wyoming on the Kern River Gas Transmission Company System Map. This is relevant to explain why staff denied certification of LADWP's Biomethane Agreements.
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23.	<p>“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 213345 (Declaration of Christina Crume, ¶ 16, (TN213755))</p>	<p>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</p>	<p>Overruled. This statement offers that TN 213345 is a true and correct copy of what was received from PG&E. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission’s evidentiary standards. To the extent this statement reflects Ms. Crume’s review of certification applications and her knowledge of Energy Commission custom and practice, the information is relevant. The statement supplements staff’s briefs and explains why staff denied certification of LADWP’s Biomethane Agreements. Moreover, allowing this statement is not prejudicial to LADWP.</p>
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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)	Overruled. This statement offers that 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. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards.
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	Overruled. This statement offers that TN 213364 is a true and correct copy of what was received from SMUD. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. To the extent this statement reflects Ms. Crume's review of certification applications and her knowledge of Energy Commission custom and practice, the information is relevant. The statement supplements staff's briefs and explains why staff denied certification of LADWP's Biomethane Agreements. Moreover, allowing this statement is not prejudicial to LADWP.

26.	Declaration of Christina Crume, ¶ 20, (TN213755) p.3. "Exhibit docketed as TN 213466 is a true and correct copy of the Spectra Energy definitions printed from the Spectra Energy website on August 31, 2016."	Lacks foundation; hearsay; unsupported conclusions or opinions	Overruled. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. The definitions are relevant to explain staff's understanding of industry standard definitions. Moreover, allowing this statement is not prejudicial to LADWP.
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	Sustained. Lacks foundation. The Committee is unable to determine or verify, on the face of the letters, which certification application each letter supports.

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	Overruled. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. To the extent this statement reflects Ms. Crume's review of Energy Commission records and her knowledge of Energy Commission custom and practice, the information is relevant. The statement supplements staff's briefs and is relevant to disprove LADWP's claim that the Energy Commission's biomethane delivery requirements conflict with FERC regulations.
29.	Supplemental Declaration of Courtney Smith in its entirety	Submitted after September 21, 2016 briefing deadline	Overruled. The Committee did not articulate a date upon which the record was closed. While the Committee did request that the parties use their responses to the Committee's Questions as an opportunity to present their full cases, the Committee left open the possibility that further evidence may be necessary.

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	Overruled. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards. To the extent this statement reflects Ms. Smith's review of Energy Commission records and her knowledge of Energy Commission custom and practice, the information is relevant. The statement supplements staff's briefs and is relevant to Energy Commission's position that BC Hydro facilities must be certified in order for facility generation to count toward LADWP's procurement requirements.
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	Overruled. This statement offers that TN 213904 is a true and correct copy of RPS Eligibility Guidebook, Sixth Edition, CEC-300-2012-006-CMF. While this statement may not satisfy the technical, civil rules of evidence, this statement does meet the Energy Commission's evidentiary standards.

32.	Certificate 60758A Gateway Generating Station (TN213066) [SIC – should be 213966]	Not relevant; Lacks foundation; hearsay	Overruled as to relevance. Relevant to how staff interpreted and applied the eligibility requirements of the Third Edition Guidebook. Relevant to disprove LADWP's claim that the Energy Commission's biomethane delivery requirements conflict with FERC regulations.
33.	Certificate 60760A Consumnes Power Plant (TN213963)	Not relevant; Lacks foundation; hearsay	Overruled as to relevance. Relevant to how staff interpreted and applied the eligibility requirements of the Third Edition Guidebook. Relevant to disprove LADWP's claim that the Energy Commission's biomethane delivery requirements conflict with FERC regulations.

California Energy Commission Staff Statement of Disputed Facts

<u>No.</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>	<u>Ruling</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.”	Sustained to the extent that staff offers its statement to be evidence. Recitation, summary, or characterization of law is not evidence. However, the Committee can, and does, take notice of all laws and will treat as evidence all matters properly presented for which there has been no objection or for which an objection has been overruled.
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.”	See the Ruling regarding objection number 34, above.
36.	3. and 41. 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”).	Legal statements and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”	See the Ruling regarding objection number 34, above.

37.	4. and 41. Senate Bill 107 ("SB 107") amended the RPS statute for retail sellers and POUs 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."	See the Ruling regarding objection number 34, above.
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 energy resources by December 31, 2010.	Legal statements and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence;" not relevant	See the Ruling regarding objection number 34, above.
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	See the Ruling regarding objection number 34, above.

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), 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.	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”	See the Ruling regarding objection number 34, above.
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.”	See the Ruling regarding objection number 34, above.

42.	<p>8. 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.” “(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>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”</p>	<p>See the Ruling regarding objection number 34, above.</p>
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43.	<p>9. 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>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”</p>	<p>See the Ruling regarding objection number 34, above.</p>
44.	<p>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.</p>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”</p>	<p>See the Ruling regarding objection number 34, above.</p>

45.	<p>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.</p>	<p>Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence."</p>	<p>See the Ruling regarding objection number 34, above.</p>
46.	<p>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").</p>	<p>Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence."</p>	<p>See the Ruling regarding objection number 34, above.</p>

47.	<p>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 POU's pursuant to PUC section 399.25, as amended and renumbered by SBX1-2. These guidelines are set forth in the Fifth Edition Guidebook.</p>	<p>Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence."</p>	<p>See the Ruling regarding objection number 34, above.</p>
48.	<p>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 POU's. 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 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 POU's RPS obligation."</p>	<p>Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence."</p>	<p>See the Ruling regarding objection number 34, above.</p>

49.	<p>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 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>	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”	See the Ruling regarding objection number 34, above.
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50.	<p>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 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 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>	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”	See the Ruling regarding objection number 34, above.
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 sellers and POUs. These guidelines are set forth in the CEC’s RPS Eligibility Guidebook, Seventh Edition (“Seventh Edition Guidebook”).</p>	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”	See the Ruling regarding objection number 34, above.

52.	<p>18. The Seventh Edition Guidebook extended the grace period to apply for RPS certification for electrical generation facilities serving POU's. 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, 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."</p>	<p>Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence."</p>	<p>See the Ruling regarding objection number 34, above.</p>
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53.	<p>19. Neither LADWP nor Powerex Corp has applied to the CEC to certify any of the BC Hydro “facilities,” as designated in LADWP agreements BP 05-020-A and BP 05-020-B, as an eligible renewable energy resource for the RPS.</p>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;” conjecture; unsupported conclusions or opinions</p>	<p>Sustained to the extent that staff intended its statement to be evidence. The Statement of Disputed Facts is by its nature and definition, not evidence or fact. It merely identifies a proposed fact which must be established by evidence.</p> <p>However, please see the ruling regarding objection number 30 above. The same information was submitted in the Declaration of Courtney Smith.</p>
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54.	<p>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.”</p>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;” conjecture; unsupported conclusions or opinions</p>	<p>Sustained to the extent that staff intended its statement to be evidence. The Statement of Disputed Facts is by its nature and definition, not evidence or fact. It merely identifies a proposed fact which must be established by evidence.</p>
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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 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.”</p>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”</p>	<p>See the Ruling regarding objection number 34, above.</p>
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56.	<p>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 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.”</p>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence.”</p>	<p>See the Ruling regarding objection number 34, above.</p>
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57.	<p>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."</p>	<p>Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence;" lacks foundation; hearsay</p>	<p>See the Ruling regarding objection number 34, above.</p>
58.	<p>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.</p>	<p>Not relevant; Lacks foundation; unsupported conclusion</p>	<p>See the Ruling regarding objection number 54, above.</p>

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	See the Ruling regarding objection number 54, above.
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 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	See the Ruling regarding objection number 54, above.
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	See the Ruling regarding objection number 54, above.

62.	<p>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.</p>	<p>Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence;" lacks foundation; hearsay</p>	<p>See the Ruling regarding objection number 34, above.</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 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>	<p>Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence;" lacks foundation; hearsay</p>	<p>See the Ruling regarding objection number 34, above.</p>

64.	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 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.	Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence"	See the Ruling regarding objection number 34, above.
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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. 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>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence”</p>	<p>See the Ruling regarding objection number 34, above.</p>
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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”	See the Ruling regarding objection number 34, above.
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”	See the Ruling regarding objection number 34, above.
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 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.	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence”	See the Ruling regarding objection number 34, above.
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”	See the Ruling regarding objection number 54, above.

70.	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.	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence”	See the Ruling regarding objection number 34, above.
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. 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.”	Not relevant; Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence”	See the Ruling regarding objection number 34, above.
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	See the Ruling regarding objection number 34, above.

73.	<p>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.</p> <p>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.”</p>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;” not relevant; unsupported conclusions or opinions</p>	<p>See the Ruling regarding objection number 34, above.</p>
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74.	<p>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."</p>	<p>Legal argument and conclusions which are for briefing not for "disputed facts" to be ruled on as "evidence;" not relevant; unsupported conclusions or opinions</p>	<p>See the Ruling regarding objection number 34, above.</p>
75.	<p>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.</p>	<p>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</p>	<p>See the Ruling regarding objection number 34, above.</p>

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	See the Ruling regarding objection number 54, above.
77.	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).	Not relevant; based on declaration submitted after 9-21-16 briefing deadline	See the Ruling regarding objection number 54, above.
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	See the Ruling regarding objection number 54, above.

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 PG&E, SMUD, and Calpine	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	See the Ruling regarding objection number 54, above.
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.	See the Ruling regarding objection number 54, above.
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 for the RPS “if the facility is a ‘renewable electrical generation facility’ as defined in Section 25741 of the Public Resources Code.”	Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence;”	See the Ruling regarding objection number 34, above.

82.	<p>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:</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 thermal, or tidal current, and any additions or enhancements to the facility using that technology. [...].”</p>	<p>Legal argument and conclusions which are for briefing not for “disputed facts” to be ruled on as “evidence”</p>	<p>See the Ruling regarding objection number 34, above.</p>
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The Committee hereby **ORDERS** and **RULES** upon the Motion as provided in the above table.

Dated: January 5, 2017, at Sacramento, California.

Original signed by

ROBERT B. WEISENMILLER
Chair and Presiding Member
LADWP Appeal Committee

Original signed by

DAVID HOCHSCHILD
Commissioner and Associate Member
LADWP Appeal Committee