

DOCKETED

Docket Number:	16-RPS-02
Project Title:	Appeal by Los Angeles Department of Water & Power re Renewables Portfolio Standard Certification Eligibility
TN #:	215479
Document Title:	LADWP Comments to Committee's Proposed Decision (01.20.17)
Description:	N/A
Filer:	Pjoy Chua
Organization:	LADWP
Submitter Role:	Applicant
Submission Date:	1/20/2017 4:13:51 PM
Docketed Date:	1/20/2017

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 16-RPS-02
)	
Appeal by LADWP re)	RE: LADWP's Comments to
RPS Certification or Eligibility)	Committee's Proposed Decision in 16-
)	RPS-02
)	

THE LOS ANGELES DEPARTMENT OF WATER AND POWER'S COMMENTS TO
THE COMMITTEE'S PROPOSED DECISION IN 16-RPS-02

January 20, 2017

FELIX LEBRON
Deputy City Attorney
Los Angeles Dept. of Water and Power
111 N. Hope Street, Suite 340
Los Angeles, CA 90012
Telephone Number: (213) 367-4500
Email: Felix.Lebon@ladwp.com

JEAN-CLAUDE BERTET
Deputy City Attorney
Los Angeles Dept. of Water and Power
111 N. Hope Street, Suite 340
Los Angeles, CA 90012
Telephone Number: (213) 367-4500
Email: Jean-Claude.Bertet@ladwp.com

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 16-RPS-02
)	
Appeal by LADWP re)	RE: LADWP's Comments to
RPS Certification or Eligibility)	Committee's Proposed Decision in 16-
)	RPS-02
)	

THE LOS ANGELES DEPARTMENT OF WATER AND POWER'S COMMENTS TO
THE COMMITTEE'S PROPOSED DECISION IN 16-RPS-02

The Los Angeles Department of Water and Power ("LADWP") submits the following Comments to the Committee's Proposed Decision in 16-RPS-02, TN 215170 ("Proposed Decision"), in accordance with the Notice of Committee Conference dated January 5, 2017.¹

I. INTRODUCTION

The California Energy Commission ("CEC") initiated administrative proceeding 16-RPS-02 to address the certification and eligibility of the renewable energy that LADWP procured during Compliance Period One ("CP1") pursuant to now-expired contracts entered into in 2007 and 2009 under LADWP's then-existing RPS Policies. LADWP submitted over 400 exhibits, nine witness declarations (fact and expert), and multiple briefs and responses that raised complex issues of fact and law, many of which presented issues of first impression. LADWP thanks the Committee and Hearing Officer for their efforts and appreciates the extensive amount of work required to prepare the Proposed Decision.

¹ TN 215172 (Jan. 5, 2017 Notice of Committee Conference).

The Proposed Decision made two tentative determinations: First, the Committee determined that “LADWP’s Scattergood, Harbor, Valley and Haynes generating stations are eligible renewable energy resources and their electricity generated under the Biomethane Agreements, upon verification by staff, will count in full toward LADWP’s RPS Program procurement obligations.”² Second, the Committee determined that the “renewable energy credits from the generation from the BC Hydro generation cannot be counted toward LADWP’s RPS Program procurement obligations.”³

The Proposed Decision reached the correct result regarding the RPS-eligibility of the generation under the Biomethane Agreements. The Proposed Decision correctly found that the use of an exchange agreement for delivery of biomethane was not prohibited in 2009. As discussed in more detail below, LADWP disagrees with the Proposed Decision’s interpretation of the “rules in place as of the date the contract was executed.” However, in the case of the Biomethane Agreements, the Committee’s certification of the Biomethane Agreements under the Third Edition RPS Eligibility Guidebook does not cause a harmful or unjust result. The eligibility standards for biomethane under LADWP’s 2008 RPS Policy and the Third Edition Guidebook were substantively similar. Thus, the Committee would have reached the same determination if the Committee applied LADWP’s rules in place in 2009. Also, LADWP believes that it would have prevailed had the Committee chosen to address the federal questions raised in LADWP’s Initial and Reply Responses. Therefore, LADWP is prepared to accept the Proposed Decision’s biomethane determination to resolve this dispute.

The remainder of these Comments focuses on the Proposed Decision’s tentative determination regarding the BC Hydro procurement and the related findings of fact and

² TN 215170 (Proposed Decision) at 2.

³ TN 215170 at 2.

conclusions of law. The Proposed Decision failed to address legal arguments issues and material evidence raised in LADWP's Initial and Reply Responses to the Committee Scoping Order dated July 27, 2016.⁴ As a result, the Proposed Decision contains findings that are either inconsistent with the evidentiary record or California law. In addition, the Proposed Decision did not consider or address LADWP's equitable or undue prejudice arguments, which are particularly important to prevent an unjust and prejudicial result in the event the Committee does not change the BC Hydro determination upon further consideration. The Public Resources Code vests the Committee with the authority to fashion an equitable remedy that avoids an unjust result to LADWP. As discussed in the specific comments below, the Committee should consider and address these issues before rendering a final decision.

II. SPECIFIC COMMENTS TO PROPOSED DECISION

A. The Proposed Decision Fails to Address the Retroactive Application of the CEC's Certification Standards under Sections 399.16(d) and 399.12(e)(1).

The Proposed Decision tentatively determined that Sections 399.16(d) and 399.12(e)(1)(C) must be construed as requiring the application of the CEC's certification and RPS-eligibility standards to LADWP's renewable resources procured before June 1, 2010, including LADWP's procurement of renewable energy under the BC Hydro PPAs.⁵ The foundation for this determination is the Committee's interpretation of Section 399.16(d)(1), which refers to a "renewable energy resource [] eligible under the rules in place when the contract was executed." The Proposed Decision finds that the rules in place must refer to the CEC's rules under the RPS Eligibility Guidebook. The Proposed Decision does not, however,

⁴ TN 213475 (LADWP's Initial Response to Committee Scoping Order); TN 213758 (LADWP's Reply Response to Committee Scoping Order).

⁵ TN 215170 (Proposed Decision) at 9-15.

address LADWP's evidence and legal arguments regarding the retroactive application of the CEC's rules to LADWP's renewable resource at issue in this proceeding.⁶

The evidentiary record in this proceeding established undisputed facts that confirm the Proposed Decision proffers a retroactive interpretation of Sections 399.16(d)(1) and 399.12(e)(1)(C). The evidence in the record established the following undisputed facts:⁷ LADWP executed the BC Hydro PPAs on March 28, 2007. The City and LADWP's Board approved the BC Hydro PPAs pursuant to LADWP's 2005 RPS Policy adopted consistent with Section 378. The CEC's certification standards did not apply to LADWP under Section 387 enacted by SB 1078. SBX1-2 became effective on December 10, 2011. Before SBX1-2 became effective, LADWP was not required to certify its renewable resources or procurement with CEC pursuant to the CEC's rules under the RPS Eligibility Guidebook.⁸

The California Supreme Court defined a retroactive law as "one that affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute."⁹ The undisputed facts referenced above establish conclusively that the CEC's rules did not apply to, or determine the eligibility of, LADWP's procurement of renewable energy under the BC Hydro PPAs when LADWP executed those agreements on March 28, 2007. The Proposed Decision, therefore, applies SBX1-2 retroactively as defined by the California Supreme Court.

The Proposed Decision implies, but does not directly state, that the Committee does not need to address LADWP's retroactive assertions of law arguments so long as the CEC applies

⁶ See TN 213475 at 40-42, 64-65, 101-102; TN 213758 at 9-16; 25-28.

⁷ See TN 213910 (Joint Statement of Stipulated Facts) at Fact 85; TN 213475 at 40-42; TN 213758 at 9-16; 25-28.

⁸ See TN 213910 at 15, Fact No. 85 TN 213475 at 40-42; TN 213758 at 9-16; 25-28;

⁹ *Evangelatos v. Supr. Ct.*, 44 Cal.3d 1188, 1206 (1988).

the RPS Eligibility Guidebook in effect on the date of contract execution.¹⁰ Such a conclusion, however, is inconsistent with SB 1078 and the evidence in the record establishing that the CEC's rules under the RPS Eligibility Guidebook did not apply to LADWP's procurement before SBX1-2's effective date. LADWP Initial and Reply Responses raised arguments regarding the retroactive interpretation of Sections 399.16(d)(1) and 399.12(e)(1)(C) that applied to the BC Hydro PPAs and the Biomethane Agreements.¹¹

California law mandates a presumption that a legislative enactment applies prospectively, unless the legislation expressly states that the law applies retroactively or there is clear evidence of legislative intent to apply retrospective legislation.¹² Here, there is no express language in SBX1-2 or any evidence in the legislative history to support a retroactive interpretation. To the contrary, SBX1-2 contains a grandfather clause which Black's law dictionary defines as follows: "Provision in a new law or regulation exempting those already in or a part of the existing system which is being regulated. An exception to a restriction that allows all those already doing something to continue doing it even if they would be stopped by the new restriction." The Proposed Decision, however, did not address the arguments and evidence on these issues raised in LADWP's Initial or Reply Responses. As a result, the Committee has not made the necessary findings of fact or conclusions of law in the Proposed Decision required under California law to support the Committee's retroactive application of the CEC's certification standards. Moreover, the Committee's consideration of these dispositive arguments and evidence would require that the Committee find that LADWP's BC Hydro procurement be counted toward LADWP's RPS

¹⁰ TN 215170 at 26 ("Finally, because we do not apply the Fourth Edition Guidebook to the Biomethane Agreements, we do not address LADWP's retroactive application of law assertions").

¹¹ TN 213475 at 40-42, 64-65, 101-102; TN 213758 at 9-16; 25-28.

¹² TN 213475 at 40-42, 64-65, 101-102; TN 213758 at 9-16; 25-28.

obligations for CP1. Accordingly, LADWP respectfully requests that the Committee address LADWP's arguments and evidence on this issue before rendering any final decision.¹³

B. The Proposed Decision Does Not Address All of LADWP's Statutory Interpretation Arguments and Contains Findings Inconsistent with the Evidentiary Record.

The Proposed Decision fails to address all of the arguments raised in LADWP's Initial and Reply Responses regarding the interpretation of Sections 399.16(d) and 399.12(e)(1)(C), and also contains findings that are inconsistent with the evidentiary record.

1. The Proposed Decision's Interpretation of Section 399.16(d)(1).

The Proposed Decision determined that the term "renewable energy resource" in Section 399.16(d)(1) referred to the defined term "eligible renewable energy resource."¹⁴ This interpretation required the Committee to rewrite the statutory language. The evidentiary record, however, does not support the reasons identified in the Proposed Order for rewriting Section 399.16(d).

For example, the Proposed Order concluded that LADWP's interpretation of Section 399.16(d) would permit LADWP to deem large hydroelectric generation as RPS-eligible.¹⁵ There is no evidentiary support for this conclusion. In October 2004, the City and LADWP's Board excluded large hydroelectric generation from Hoover as an eligible resource under LADWP's RPS Policies.¹⁶ In addition, while LADWP's Initial Response acknowledged that other POUs did count generation from Hoover as eligible before SBX1-2 was enacted,¹⁷ the voluntary RPS programs adopted by other POUs are not at issue in this proceeding. Moreover, while immaterial to this dispute, there is no evidence in the record that any of those other POUs

¹³ Because the Proposed Decision did not address LADWP's retroactive application of law arguments, LADWP must reserve the right to address the Committee's findings on these issues made in any subsequent proposed decision.

¹⁴ TN 215170 at 11.

¹⁵ TN 215170 at 12.

¹⁶ See TN 213475 at 5-8.

¹⁷ See TN 213475 at 6.

attempted to grandfather large hydro generation under Section 399.16(d). LADWP's evidence established that the renewable energy procured under the BC Hydro PPAs in 2011 – the renewable resource at issue here – was generated from small hydroelectric facilities less than 30 MWs.¹⁸

The Proposed Decision also relies on Sections 399.16(b) and 399.16(c) in support of the proffered interpretation of Section 399.16(d)(1).¹⁹ Those sections, however, address the portfolio content category (“PCC”) or “bucket” requirements applicable to procurement under contracts executed *after* June 1, 2010. In contrast, Section 399.16(d) exempts contracts executed before June 1, 2010 from the PCC requirements, and provides that the energy under these contracts shall count in full toward the RPS procurement requirements. There is no dispute here that the PCC requirements and the CEC's certification standards apply to new procurement under SBX1-2.

In addition, the Proposed Decision discusses SB 107, which was enacted in January 2007.²⁰ SB 107 included amendments to the Public Utilities Code that distinguished POU's “renewable energy resources” from “eligible renewable energy resources” as defined in the then-existing version of Public Utilities Code section 399.12. SB 107 amended former Public Utilities Code section 387. As amended, Section 387(b)(2) required that POU's provide renewable resource reports containing “the contribution of each type of *renewable energy resource* with separate categories for those fuels that are *eligible renewable energy resources* as defined in Section 399.12, except that the electricity is delivered to the [POU] and not a retail seller.” (emphasis added). SB 107 provides further support that the Legislature was well aware of the distinction between “renewable energy resources” and “eligible renewable energy resources”

¹⁸ TN 213475 at 16-23; TN 213758 at 19-21.

¹⁹ TN 215170 at 11.

²⁰ TN 215170 at 4.

when SBX1-2 was enacted, and that the use of the term “renewable energy resource” in Section 399.16(d)(1) was intentional.

The Proposed Decision also failed to consider all of the legislative history LADWP submitted into the record.²¹ The Proposed Decision states that LADWP relied on “two isolated excerpts from legislative committee reports” in support of LADWP’s argument that the Legislature intended to grandfather and count in full LADWP’s procurement.²² This statement is inconsistent with the evidentiary record established in this proceeding. LADWP’s Initial Response addressed three separate legislative reports analyzing SBX1-2; three legislative reports analyzing AB 2196 that summarized the Legislature’s understanding of the existing law under SBX1-2 and the provisions that grandfathered LADWP’s renewable procurement; a letter from a delegation of ten Southern California legislators to Chairman Weisenmiller dated May 18, 2016; and an additional letter from California State Senator Robert M. Hertzberg dated May 27, 2016, further confirming the Legislature’s intent to grandfather and count in full LADWP’s BC Hydro procurement.²³ The Committee should reconsider its determination in the Proposed Decision based upon the full evidentiary record of legislative history in this proceeding.

2. The Proposed Decision’s Interpretation of Section 399.12(e)(1)(C).

The Proposed Decision stated that LADWP’s interpretation failed to give meaning to the reference to Public Resources Code Section 25741 in Section 399.12(e)(1)(C).²⁴ The Proposed Decision, however, failed to consider or address the arguments and evidence raised in LADWP’s Initial and Reply Responses directly addressing this issue.²⁵ The reference in Section 399.12(e)(1)(C) to Public Resources Code Section 25741 was intended to exclude generation

²¹ TN 213475 at 52-59.

²² TN 215170 at 11.

²³ TN 213475 at 52-59.

²⁴ TN 215170 at 11.

²⁵ TN 213475 at 46-47; TN 213758 at 23-26.

from large hydroelectric generating facilities as a grandfathered resource under SBX1-2. Unlike LADWP, other POU's treated generation from large hydroelectric generation as renewable resources under their voluntary RPS programs adopted under Section 387. Section 399.30(j) provides textual support for this interpretation: Section 399.30(j) addresses "hydroelectric generation located within the state" that "does not meet the definition of a 'renewable electrical generation facility' pursuant to *Section 25741 of the Public Resources Code*" In the case of Section 399.30(j), the Legislature provided an express exception addressing generation procured from large hydroelectric generating facilities that did not meet the definition of a renewable electrical generating facility as defined in Public Resources Code Section 25741.

LADWP has provided the sole interpretation that gives meaning to Section 399.12(e)(1)(C) and effectuates the Legislature's expressed intent to provide a seamless transition of POU's renewable resources under SBX1-2. In addition, LADWP's interpretation is consistent with the purpose of a grandfather clause, which is to give "those engaged in a business being brought under regulation the right to continue their existing business without being subjected to certification requirements that would be applicable if the business were then being started for the first time."²⁶

C. The Proposed Decision Does Not Address LADWP's Equitable and Undue Prejudice Arguments.

The Proposed Decision fails to address LADWP's equitable and undue prejudice arguments.²⁷ The Committee's tentative determination that the renewable energy procured under the BC Hydro PPAs cannot be counted toward LADWP's RPS obligations for CP1 would cause undue prejudice and substantial harm to LADWP and its ratepayers if the determination becomes final. The Committee must therefore consider and address LADWP's equitable and undue

²⁶ *Golden Gate Scenic Steamship Lines, Inc. v. Pub. Util. Comm'n*, 57 Cal.2d 373, 379 (1962).

²⁷ TN 213475 at 101-102; TN 213758 at 45-52.

prejudice arguments, including issues relating to retroactive rulemaking, *Ex Post Facto* laws, the timing of the CEC's rulemaking and Staff's decisions.

LADWP entered into the BC Hydro PPAs in good faith and in reliance on the then-existing law, which did not require the CEC's certification of the Powerex small hydro facilities.²⁸ The Proposed Decision states that LADWP did not seek certification of the BC Hydro facilities, but this finding fails to consider the fact that there was no mechanism for LADWP to seek certification of these facilities because LADWP did not own the BC Hydro facilities. LADWP's evidence established that Powerex owned the BC Hydro facilities, and terms of the BC Hydro PPAs did not require that Powerex's BC Hydro facilities be certified by the CEC.²⁹ Thus, LADWP had no contractual right or other ability to compel Powerex to apply for certification.³⁰ LADWP did apply for certification of the renewable energy facilities that LADWP *owned and operated*, but those facilities did not include the BC Hydro facilities.³¹

In addition, the BC Hydro PPAs expired on their terms a few weeks after SBX1-2 became effective. LADWP only counted the renewable energy generated from January 1, 2011 to December 9, 2011 – the day before SBX1-2 took effect. LADWP's Initial and Reply Responses established that the renewable (and non-GHG emitting) energy procured during this period was generated from small hydro facilities less than 30 MWs.³² LADWP submitted attestations from Powerex confirming the amount of renewable energy generated from the BC Hydro facilities and confirming the total number of RECs claimed for CP1.³³ LADWP submitted evidence establishing that LADWP paid over \$46 million for this renewable energy,

²⁸ TN 213475 at 16-23; TN 213758 at 19-21.

²⁹ TN 215170 at 15.

³⁰ TN 215170 at 15.

³¹ TN 213475 at 16-23; TN 213758 at 19-21.

³² TN 213475 at 16-23; TN 213758 at 19-21.

³³ TN 213475 at 16-23; TN 213758 at 19-21.

which was delivered into LADWP's service territory and used to serve LADWP's native load for retail sales.³⁴ The impact of the Committee's tentative determination would be to take away the economic benefit of the BC Hydro PPAs from LADWP's ratepayers who had paid the full amount for this renewable energy.

Notwithstanding these facts, the Proposed Decision would deem over 400,000 RECs as ineligible to be counted toward LADWP's CP1 requirements. The California Air Resources Board (CARB) has not adopted regulations addressing the RPS-penalty structure for POUs, but Section 399.30(n)(1) states that any penalties imposed by CARB shall "be comparable to those adopted by the [CPUC] for noncompliance by retail sellers." The CPUC established a penalty structure of \$50/REC for retail sellers. Thus, assuming CARB adopts a similar penalty structure for POUs, the Committee's failure to provide credit or count LADWP's BC Hydro procurement could result in a potential penalty in excess of \$22 million. LADWP has no other source of revenues apart from its ratepayers. Therefore, the imposition of such a penalty would be grossly unfair to the City and LADWP's ratepayers, particularly in light of these facts.

Furthermore, even if Powerex had applied for certification, the application would have been futile because of the CEC's then pending analysis of the RPS-eligibility of BC Hydro, which the CEC ultimately determined to be ineligible for the RPS in an untimely report adopted on January 14, 2014 after the close of CP1.³⁵ Indeed, even when LADWP submitted applications for certification of the renewable facilities LADWP did own, (including the Biomethane Agreements and LADWP's Castaic facilities), the CEC did not issue a decision to LADWP until after the close of CP1. Therefore, the Proposed Decision is now imposing a requirement that at the time would have been a factual and legal impossibility. Also LADWP

³⁴ TN 213475 at 16-23; TN 213758 at 19-21.

³⁵ TN 212426.

has no ability to procure RECs retroactively after CP1 closed on December 31, 2013, and no other method to cure is now available.

The Public Resources Code gives the Committee authority to avoid such an unjust and inequitable outcome in the proceeding. Public Resources Code Section 25218(e) states “[i]n addition to other powers specified in this division, the commission may do any of the following: Adopt any rule or regulation, *or take any action, it deems reasonable and necessary to carry out this division.*” (emphasis added). Section 25218.5, in turn, states “[t]he provisions specifying any power or duty of the commission shall be liberally construed, in order to carry out the objectives of this division.”³⁶

Thus, the Committee has the authority to fashion an equitable remedy and require Staff to count and credit LADWP’s BC Hydro procurement. The BC Hydro PPAs are expired and a limited ruling providing some form of credit to LADWP would not have meaningful impact to California’s RPS policies. To the contrary, such a ruling would avoid jeopardizing the Governor’s RPS policies and instead would put an end to this dispute and allow LADWP and Staff to dedicate their efforts to the existing challenges presented by SB 350. LADWP requests that the Committee consider its equitable powers under the Public Resources Code when considering and addressing LADWP’s equitable and undue prejudice arguments.

D. Request for Additional Findings of Fact and Conclusions of Law.

The Proposed Decision omits material findings of fact and conclusions of law that should be addressed before the Committee adopts any final order. For the reasons discussed in these Comments, the Committee must address LADWP’s arguments and evidence, which LADWP expects will result in the Committee issuing a revised Proposed Decision. However, in the event that the Committee elects not to address LADWP’s arguments and evidence, LADWP has

³⁶ The “division” refers to Division 15 of the Public Resources Code and Public Utilities Code § 399.11 *et seq.*

attached as **Exhibit A** the list of proposed additional material findings of fact and conclusions of law that the Committee should include in any final decision.

III. ADDITIONAL ISSUES FOR THE COMMITTEE’S RESOLUTION

In addition to the issues regarding the Proposed Decision raised herein, there are a number of issues that the Committee must still address before issuing a final decision and closing this administrative proceeding. The Proposed Decision determined that the electricity generated “under the Biomethane Agreements, upon verification by Staff, will count in full toward LADWP’s RPS Program procurement obligations.”³⁷ LADWP and Staff have started the process to verify LADWP’s generation under the Biomethane Agreements. On January 12, 2017, LADWP and Staff filed a Joint Stipulation and Request for Committee Order Granting Staff Access to Confidential Information in 16-RPS-02, which would grant Staff access to certain metered-generation data and heat-rate information that was designated as confidential in this proceeding.³⁸ LADWP requests that the Committee schedule additional committee conferences to address the number of biomethane RECs that will count in full following Staff’s completion of the verification process and any other verification-related issues.

///

///

³⁷ TN 215170 at 2.

³⁸ TN 215274.

IV. CONCLUSION

LADWP thanks the Committee for its time and attention to these matters and looks forward to addressing these issues with the Committee during the January 25, 2017 Committee conference.

Dated: January 20, 2017

Respectfully submitted,

/s/ Felix Lebron

FELIX LEBRON
Deputy City Attorney
Los Angeles Dept. of Water and Power
111 N. Hope Street, Suite 340
Los Angeles, CA 90012
Telephone Number: (213) 367-4500
Email: Felix.Lebon@ladwp.com

/s/Jean-Claude Bertet

JEAN-CLAUDE BERTET
Deputy City Attorney
Los Angeles Dept. of Water and Power
111 N. Hope Street, Suite 340
Los Angeles, CA 90012
Telephone Number: (213) 367-4500
Email: Jean-Claude.Bertet@ladwp.com

EXHIBIT A
TO LADWP’S COMMENTS TO COMMITTEE’S PROPOSED DECISION
IN DOCKET NO. 16-RPS-02

Request for Additional Findings of Fact and Conclusions of Law

Unless otherwise noted, the “Omitted Findings of Fact to Include” proposed in section A below are from the Joint Statement of Facts and Supporting Evidence the parties filed in this proceeding. The cross reference is to the “Fact No.” in that filing. See TN213910.

A. Omitted Findings of Fact to Include

LADWP RPS Policies and Exclusion of Hoover

1. In 2004 the City Council of the City of Los Angeles and LADWP’s Board excluded the Hoover hydroelectric power plant as an eligible resource under LADWP’s Renewable Portfolio Standard (RPS) Policies, but included LADWP’s aqueduct generating units greater than 30 MWs in size as eligible resources under LADWP’s RPS policy. Fact No. 13 and TN# 213985 Fact No. 173.
2. On June 29, 2005, the City Council approved the 2005 RPS Policy. Fact No. 14.
3. LADWP’s 2005 RPS Policy defined the list of “Eligible Resources” as follows:
“Electricity produced from the following technologies constitute ‘eligible’ resources: biomass, biodiesel, digester gas, fuel cells using renewable fuels, geothermal, landfill gas, municipal solid waste only if the energy conversion process does not employ direct combustion of solid fuel; ocean wave, ocean thermal, and tidal current technologies; solar photovoltaic, small hydro 30 MWs or less, and the Los Angeles Aqueduct hydro power plants; solar thermal, wind; and other renewables that may be defined later.” Fact No. 15.

4. In 2007 LADWP's Board adopted Resolution No. 007-197 approving an amendment to the 2005 RPS Policy to incorporate the changes found in SB107, including 20% RPS by 2010. ("2007 RPS Policy") Fact No. 17.
5. The 2007 RPS Policy required that 20 percent of LADWP's energy sales to retail customers be generated from renewable resources by December 31, 2010. Fact No. 18.
6. Section 3 of the 2007 RPS Policy defined "Eligible Resources" as: "Electricity produced from the following technologies constitute 'eligible' resources: biomass, biodiesel, digester gas; fuel cells using renewable fuels; geothermal; landfill gas; municipal solid waste only if the energy conversion process does not employ direct combustion of solid fuel; ocean wave; ocean thermal, and tidal current technologies; solar photovoltaic; small hydro 30 MW or less, and the Los Angeles Aqueduct hydro power plants; solar thermal; wind; and other renewable resources that may be defined later." Fact No. 19.
7. On May 20, 2008, LADWP's Board adopted Resolution No. 008-247 approving an amendment to the 2007 RPS Policy. Fact No. 20.
8. Section 3 of the 2008 RPS Policy contained LADWP's amended definition of "Eligible Resources:" "Electricity produced from the following technologies constitute 'eligible' resources: biodiesel; biomass; conduit hydroelectric (hydroelectric facilities such as an existing pipe, ditch, flume, siphon, tunnel, canal, or other manmade conduit that is operated to distribute water for beneficial use); digester gas; fuel cells using renewable fuels; geothermal; hydroelectric incremental generation from efficiency improvements; landfill gas; municipal solid waste; ocean thermal, ocean wave, and tidal current technologies; renewable derived biogas (meeting the heat content and quality requirements to qualify as pipeline-grade gas) injected into a natural gas pipeline for use in a renewable facility; multi-fuel facilities using renewable fuels (only the

generation resulting from the renewable fuels will be eligible), small hydro 30 MW or less, and the Los Angeles Aqueduct hydro power plants; solar photovoltaic; solar thermal electric, wind, and other renewables that may be defined later.” Fact No. 21.

9. On December 6, 2011, LADWP’s Board adopted Resolution No. 012-109, which amended LADWP’s 2008 RPS policy to implement the new legislative requirements under SBX1-2. Fact No. 25.

Powerex Contracts for BC Hydro

10. On March 6, 2007, LADWP’s Board adopted Resolution No. 007-166, which approved the power purchase agreements (PPAs) with Powerex Corp. (Powerex) for hydroelectric energy from small hydroelectric facilities in British Columbia (BC Hydro), consistent with Public Utilities Code Section 378. Fact No. 31.
11. On March 23, 2007, the City of Los Angeles approved the Powerex BC-Hydro PPAs. Fact No. 32.
12. The City of Los Angeles executed Ordinance No. 178533 on March 23, 2007. Fact No. 33.
13. Los Angeles City Ordinance No. 178533 approved the execution of the Powerex BC-Hydro PPAs. Fact No. 34.
14. Powerex and LADWP entered into two contracts for the purchase of renewable energy: Power Purchase Agreement No. BP 05-020- (“Contract A”) and Power Purchase Agreement No. BP-020-B (“Contract B”). Fact No. 35.
15. The term of the Powerex BC-Hydro PPAs started in April 2007 and expired, by their own terms, on December 31, 2011 for a total term of four years and nine months. Fact No. 36.

16. The Powerex BC-Hydro PPAs required Powerex to provide Renewable Energy from hydroelectric generating facilities less than 30 MWs. LADWP did not own the facilities procured under the BC Hydro PPAs. TN # 213985, Fact No. 99.
17. LADWP submitted the following additional evidence in support of its BCHydro REC claims for CP1: Powerex Monthly Attestation Letters regarding Renewable Energy Credits for Agreement Nos. BP-020-A and BP-020-B (January 2011 to December 2011). TN # 213985, Fact No. 108.
18. LADWP submitted the following additional evidence in support of its BC Hydro REC claims for CP1: Powerex Letters Designating Facilities under Agreement Nos. BP-020-A and BP-020-B dated November 29, 2010. TN # 213985, Fact No. 109.
19. LADWP submitted the following additional evidence in support of its BC Hydro REC claims for CP1: Powerex Letters Designating Facilities under Agreement Nos. BP-020-A and BP-020-B dated December 7, 2009. TN # 213985, Fact No. 110.
20. LADWP submitted the following additional evidence in support of its BC Hydro REC claims for CP1: LADWP Confirmation of Payment to Powerex for 2011 Monthly Invoices for Agreement Nos. BP-020-A and BP-020-B. TN # 213985, Fact No. 111.
21. The Powerex Monthly Invoices (Agreement Nos. BP-020-A and BP-020-B) confirm the total amount of delivered energy measured in MWh received by LADWP for each month in 2011 for the Powerex BC-Hydro PPAs. TN # 213985, Fact No. 112.
22. LADWP paid a total of \$46,722,920.44 for the renewable energy purchased and received under the Powerex BC Hydro PPAs. TN # 213985, Fact No. 113.
23. The BC Hydro PPAs did not require Powerex to apply for certification with the CEC for the small hydroelectric generation facilities. TN #'s 212419 and 212420.

LADWP's 2009 Shell and Atmos Biomethane Agreements

24. The 2009 Shell and Atmos biomethane agreements are based on North American Energy Standards Board (“NAESB”) base contracts for the purchase and sale of natural gas. Fact No. 37.
25. On August 13, 2002, the City approved Ordinance No. 174755, which amended the Los Angeles Administrative Code to add Section 10.5.3. Fact No. 38.
26. Ordinance No. 174755 delegated authority to LADWP’s Board under Section 10.5.3 to enter into certain contracts and financial transactions for natural gas. Fact No. 39.
27. Section 10.5.3 delegated authority to enter into contracts for the purchase of natural gas with a maximum term of five years and a maximum price of \$7.50 per million British Thermal Units (“MMBtu”). Fact No. 40.
28. On June 3, 2003, LADWP’s Board adopted Resolution No. 003-285, which approved LADWP’s use of a form NAESB Agreement for the purchase of natural gas. Fact No. 41.
29. The Board’s Resolution approved the use of a form of NAESB Base Contract for the Sale and Purchase of Natural Gas. Fact No. 42.
30. The Board confirmed that the approved NAESB Base Contract satisfied the requirements under Los Angeles Administrative Code Section 10.5.3. Fact No. 43.
31. The Board also delegated authority to LADWP’s General Manager to use the form NAESB Contract for natural gas purchases for a term not to exceed five years. Fact No. 44.
32. On January 24, 2006, LADWP’s Board adopted Resolution No. 006-122, which approved recommended amendments to Los Angeles Administrative Code Section 10.5.3 to extend the maximum term of natural gas contracts from five years to ten years and to increase the maximum purchase of natural gas prices from \$7.50/MMBtu to \$10/MMBtu. Fact No. 45.

33. On March 16, 2006, the City Council took Action approving an amendment to Section 10.5.3 of the Los Angeles Administrative Code to change the maximum contract term to ten years and the maximum purchase price to \$10/MMBtu. Fact No. 46.
34. On March 13, 2006, the City approved Ordinance No. 177405, which amended Los Angeles Administrative Code Section 10.5.3. Fact No. 47.
35. Appendix B of the Biogas Memo attached a sample NAESB Transaction Confirmation for the purchase of renewable biogas. Fact No. 49.
36. On February 1, 2008, LADWP and Shell Energy North America L.P. (Shell) entered into a NAESB Base Contract for Sale and Purchase of Natural Gas, LADWP Agreement No. 96-125-510 (the “2009 Shell Agreement”). Fact No. 50.
37. The Shell NAESB Contract was based on the form NAESB Agreement approved by LADWP’s Board on June 3, 2003. Fact No. 51.
38. LADWP’s General Manager delegated his authority for Natural Gas Transactions, dated Mar. 31, 2008. Fact No. 52.
39. On July 27, 2009, LADWP and Shell entered into a Transaction Confirmation under this Base Contract for the purchase of “renewable biomethane” as metered and delivered from designated landfills on a monthly basis, The Transaction Confirmation identified the following designated landfills in Attachment-A:
- (1) Rumpke Sanitary Landfill, located in Cincinnati, Ohio.
 - (2) Fort Smith Landfill, located In Fort Smith, Arkansas.
 - (3) Greenwood Farms Landfill, located in Tyler, Texas.
 - (4) Jefferson Davis Parish Sanitary Landfill, located in Welsh, Louisiana.
- Fact No. 53.

40. On August 25, 2009, LADWP and Shell entered into the First Amendment to the Transaction Confirmation dated July 27, 2009. The First Amendment to the Transaction Confirmation identified the following additional designated landfill in Attachment C: Johnson County Landfill, located in or near Shawnee, Kansas. Fact No. 54.
41. On March 31, 2010, LADWP and Shell entered into the Second Amendment to the Transaction Confirmation dated July 27, 2009. The Second Amendment to the Transaction Confirmation identified the following additional designated landfill in Attachment C-1 to Attachment C:
- (1) Pinnacle Gas Producers, LLC Pinnacle Road Landfill in or near Moraine, Ohio, and the Stony Hollow Landfill in or near Dayton, Ohio.
 - (2) Westside Gas Producers, LLC Landfill, located in or near Three Rivers Michigan.
- Fact No. 55.
42. The First and Second Amendments added additional landfill facilities to the LADWP and Shell July 27, 2009 Transaction Confirmation contract. Fact No. 56.
43. The Shell Base Contract, Transaction Confirmation, First Amendment, and Second Amendment are collectively referred to herein as the “Shell Agreement.” Fact No. 57.
44. The Shell Agreement had a term starting on August 1, 2009 and ending on June 30, 2014. Fact No. 58.
45. LADWP agreed to pay Shell a fixed contract price of “\$9.80 per MMBtu for the quantity documented as Renewable Biomethane (‘RB’) as metered and delivered from the designated Landfill(s) (see Attachment A) on a monthly basis.” Fact No. 59.
46. LADWP agreed to pay Shell a contract price of “\$5.80 per MMBtu for the quantity of delivered Standard Baseload gas on a monthly basis that is in excess of the documented metered and delivered RB from the designated Landfill(s).” Fact No. 60.

47. The Shell Agreement provided that “Seller shall sell to Buyer, and Buyer shall purchase from Seller 3,500 MMBtu per Day for August 1, 2009 through August 31, 2009 and 8,200 MMBtu per Day for September 1, 2009 through June 30, 2014 (‘Contract Quantity’) consisting of both RB and Standard Baseload gas as set forth in the Special Conditions.” Fact No. 61.
48. The “Special Conditions” in the Shell Agreement defined “Renewable Biomethane” or “RB” as “gas produced from the Project that consists of Landfill Gas as that term is defined in the California Energy Commission’s (CEC) Renewable Energy Program Overall Program Guidebook (January 2008)...” and acknowledged that “RB, as defined herein, is a qualifying resource under Buyer’s [LADWP] Renewable Portfolio Standard (‘RPS’) program in effect as of the execution date of this Transaction Confirmation, and neither Party makes any further representations in this regard.” Fact No. 62.
49. The Shell Agreement further provided that “Seller further agrees that all deliveries of RB received by Seller under said contracts with the designated landfills shall be delivered to Buyer under this Transaction Confirmation up to the Contract Quantity.” Fact No. 63.
50. The Shell Agreement provided that the Delivery Point for the receipt of the Renewable Biogas was the natural gas terminal located at Opal, Wyoming. Fact No. 64.
51. Kern River Gas Transmission Company owned and operated the interstate natural gas pipeline system where the Opal terminal point was located. Fact No. 65.
52. The Shell Agreement included a section titled “Seller’s Support of Buyer’s RPS Program” that provided:
- Seller will provide an attestation identifying the specific landfill source, the stating the RB source is Landfill Gas, that the RB is injected into a pipeline at the landfill and is measured in BTU’s. The parties understand that this RB will be delivered to Buyer through an exchange

rather than direct long-haul transportation. Specifically, the environmental attributes will be unbundled from the gas at or near the landfill source, and the resulting gas without environmental attributes will be sold by Seller in the local market. The gas will be replaced with an equal volume of gas and re-bundled with the environmental attributes for delivery to Buyer at the specified Delivery Point as RB. Seller shall provide any additional documentation or information related to the supply of RB, to the Buyer, as reasonably required to support Buyer's ongoing reporting compliance with Buyer's RPS program. Fact No. 66.

53. On July 30, 2009, LADWP and Atmos Energy Marketing LLC (Atmos) entered into LADWP entered into a NAESB Base Contract for Sale and Purchase of Natural Gas, LADWP Agreement No. 96-125-516. Fact No. 67.

54. The Atmos NAESB Contract was based on the form NAESB Agreement approved by LADWP's Board on June 3, 2003. Fact No. 68.

55. The Atmos Base Contract and Transaction Confirmations (Ex. 28) are collectively referred to herein as the "Atmos Agreement." Fact No. 69.

56. The Atmos Agreement had a term starting on September 1, 2009 and ending on July 31, 2014. Fact No. 70.

57. LADWP agreed to pay Atmos a fixed contract price of "\$9.80 per MMBtu" for the Landfill Gas. Fact No. 71.

58. The Atmos Agreement provided that "Seller shall sell to Buyer, and Buyer shall purchase from Seller, up to 5,000 MMBtus per Day ('Contract Quantity') for the Delivery Period, consisting of both the Environmental Attributes and Standard Base Load gas as set forth in the Special Conditions" under the First Transaction Confirmation. And the Atmos Agreement provided that "Seller shall sell to Buyer, and Buyer shall purchase from Seller, up to 600 MMBtus per Day

("Contract Quantity") for the Delivery Period, consisting of both Renewable Attributes and Standard Base Load gas as set forth in the Special Conditions” under the Second Transaction Confirmation. Under First and Second Transaction Confirmations combined, the Atmos Agreement provided up to 5,600 MMBtus per Day of gas. Fact No. 72.

59. The Atmos Agreement had a “Special Conditions” defined “Standard Base Load” as “gas produced from the Project that consists of Landfill Gas as that term is defined in the California Energy Commission’s (CEC) Renewable Energy Program Overall Program Guidebook (January 2008)...” and acknowledged that “Landfill Gas, as defined herein, is a qualifying resource under Buyer’s [LADWP] Renewable Portfolio Standard (‘RPS’) program in effect as of the execution date of this Transaction Confirmation, and neither party makes any further representation in this regard.” Fact No. 73.

60. The Atmos Agreement further provided that “Seller further agrees that all deliveries of Landfill Gas received by Seller under said contracts with the designated landfills shall be delivered to Buyer under this Transaction Confirmation up to the Contract Quantity hereof.” Fact No. 74.

61. The Atmos Agreement provided a Delivery Point for the receipt of the Landfill Gas was the Kern River Transmission natural gas terminal located at Opal, Wyoming. Fact No. 75.

62. The Atmos Agreement included a section titled “Seller’s Support of Buyer’s RPS Program” that provided: “ Seller will provide an attestation identifying the specific landfill source, stating the supply source is Landfill Gas and that the Landfill Gas in is injected into a pipeline at the landfill and is measured in BTU’s. The parties understand that this Landfill Gas will be delivered to Buyer through an exchange rather than direct long-haul transportation. Specifically, the environmental attributes will be unbundled from the gas at or near the landfill source, and the resulting gas without environmental attributes will be sold by Seller in the local market. The gas

will be replaced with an equal volume of gas and re-bundled with the environmental attributes for delivery to Buyer at the specified Delivery Point as Standard Base Load. Seller shall provide any additional documentation or information related to the supply of Standard Base Load, to the Buyer; as reasonably required to support Buyer's ongoing reporting compliance with Buyer's RPS program." Fact No. 76.

63. LADWP used its Firm Transportation Service Agreement with Kern River Gas Transmission Company ("KRT") to transport the gas purchased under the Shell and Atmos Agreements from the receipt point at Opal to the Southern California Gas Company's (SoCal Gas or SoCal) delivery points in Southern California. Fact No. 77.

64. LADWP's Restatement of KRT Firm Transportation Agreement No. 1006 is a restatement of LADWP's original firm transportation agreement entered into on April 2, 1990. Fact No. 78.

65. LADWP's Restatement of KRT Firm Transportation Agreement No. 1706 is a restatement of LADWP's expanded firm transportation service agreement executed on May 21, 2001. Fact No. 79.

66. On March 5, 2013, LADWP's Board adopted Resolution No. 013-188, which approved the Restatement of KRT Firm Transportation Agreement No. 1006. Fact No. 80.

67. On March 5, 2013, LADWP's Board also adopted Resolution No. 013-193, which approved the Restatement of KRT Firm Transportation Agreement No. 1706. Fact No. 81.

68. On April 17, 2013, the City Council approved the Restatement of KRT Firm Transportation Agreements Nos. 1006 and 1706. Fact No. 82.

69. LADWP's KRT Monthly Invoices for the period of January 2011 to December 2013 supports the receipt of the renewable biogas procured under the Shell and Atmos Agreement at Opal and

transportation and delivery of the renewable biogas to SoCal Gas's receipt points at Kramer Junction and Wheeler Ridge. TN # 213985, Fact No. 139.

70. LADWP's payment of KRT for Monthly Invoices from January 2011 to December 2013

supports the receipt of the renewable biogas procured under the Shell and Atmos Agreement at Opal and transportation and delivery of the renewable biogas to SoCal Gas's receipt points at Kramer Junction and Wheeler Ridge. TN # 213985, Fact No. 140.

71. KRT Attestation for Gas Delivery under LADWP's Firm Transportation Service Agreements

which included firm delivery for renewable biogas under Shell and Atmos Agreements to SoCal Gas' receipt points at Kramer Junction and Wheeler Ridge. TN # 213985, Fact No. 141.

72. SoCal Gas Master Service Agreement No. 47498-6 provided the terms for the transportation of

gas on SoCal Gas's intrastate pipeline system to LADWP's four in-basin generating facilities, including the Scattergood Generating Station, Haynes Generating Station, Valley Generating Station, and Harbor Generating Station. TN # 213985, Fact No. 148.

B. Omitted Conclusions of Law to Include

1. Senate Bill Number 107 (SB107), entitled "Renewable energy: Public Interest Energy Research, Demonstration, and Development Program" required Retail Sellers to increase their procurement of "eligible renewable energy resources" to 20 % by December 31, 2010.
2. SB 107 imposed enhanced reporting requirements on local publicly owned electric utilities (POUs).
3. SB 107 did not mandate that a POU establish an RPS.
4. SB 107 did not require a POU to certify its "renewable resources."
5. The California Renewable Energy Resources Act (SBX1-2), significantly modified the RPS and became effective on December 10, 2011, which is when it both repealed language directing

POUs to develop their own renewable procurement program and generally imposed the RPS program requirements applicable to electrical corporations on POUs, as well as established renewable portfolio content requirements for all load-serving entities for each of three compliance periods.

6. SBX1-2 requires the Energy Commission to count in full towards the procurement requirements any contract or ownership agreement originally executed prior to June 1, 2010.

C. Proposed Revisions to Committee's Conclusions of Law

To the extent the Committee wants to revise its Conclusions of Law in the Proposed Decision, the below are proposed modifications.

1. The California Renewable Portfolio Standard (RPS), which was enacted by SB 1078 and became effective January 1, 2003, imposed the following requirements:
 - a. The California Public Utilities Commission was directed to require electrical corporations to purchase increasing quantities of renewable resources such that total renewable procurement would constitute 20 percent of retail sales by December 31, 2017; and
 - b. The Energy Commission was directed to certify “eligible renewable energy resources” and develop an accounting mechanism to verify that renewable generation is only counted once for purposes of meeting the RPS Program requirements;
2. Under SB 1078 publicly-owned utilities (POUs) were not subject to the RPS procurement obligations imposed on electrical corporations, but were directed to implement and enforce their own renewable procurement plans that recognized Legislative intent to encourage renewable energy resources, and to report on those plans to their customers;
3. In 2004, ~~in order to meet its statutory renewable procurement obligations,~~ **to achieve a voluntary RPS**, the Los Angeles City Council ~~approved~~ **requested that** LADWP ~~renewable procurement plan and amended it several times thereafter, including an amendment in 2008 to include “renewable derived biogas (meeting the heat content and quality requirements to qualify as pipeline grade gas) injected into a natural gas pipeline for use in renewable facility”;~~ **adopt its proposed RPS to achieve 20 percent of renewable resources by 2017, and specifically excluded hydroelectric generation from the Hoover Power Plant.**
4. Beginning in 2003, the Energy Commission fulfilled its RPS responsibilities in part through the adoption of a series of RPS Eligibility guidebooks that specify the process and criteria used for certification of eligible renewable energy resources and verification of RPS compliance **for retail sellers**;
5. SB 107, effective January 1, 2007, was one of a number of modifications to the RPS program, and required enhanced POU reporting on renewable procurement to the Energy Commission, as well as Energy Commission development of a tracking system for

“renewable energy credits” associated with the production of electricity from eligible renewable energy resources for retail sellers;

6. ~~SBX 1-2, which significantly modified the RPS, was enacted in 2011; it both repealed language directing POU to develop their own renewable procurement program and generally imposed the RPS program requirements applicable to electrical corporations on POU, as well as established renewable portfolio content requirement for all load-serving entities for each of three compliance periods;~~
7. AB 2196, effective January 1, 2013, further modified the RPS by adding specific provisions applicable to the use of biomethane as a means of obtaining certification of an eligible renewable energy resource;
8. Both SBX1-2 and AB 2196 contain provisions that mandate specific treatment of renewable resources contracted for prior to specific dates as follows:
 - a. AB 2196 allows generation from facilities using biomethane to count in full towards procurement obligations under the rules in place at the time the contract was executed if the procurement was reported to the Energy Commission and is otherwise eligible under the rules in place at the time the contract was executed;
 - b. SBX1-2 requires the Energy Commission to certify facilities approved by a POU prior to June 1, 2010 and ~~requires the Energy Commission to count in full~~ allows procurement under contract entered into on or before June 1, 2010 towards procurement obligations if the resources were eligible under the rules in place at the time the contract was executed;
9. To determine whether the Energy Commission must certify and count generation procured under LADWP’s Biomethane Agreements and BC Hydro resources, the Energy Commission must determine the meaning of “rules in place” at the time the contract was executed;
- ~~10. Because nothing to the contrary is indicated in legislative language, we interpret “rules in place” at the time the contract was executed to have the same meaning throughout the RPS statutes, including the provisions added or amended by AB 2196 and SBX1-2;~~
- ~~11. Based on the totality of the legislative language—including the numerous example of provisions stating that only “eligible renewable energy resources” count towards RPS~~

~~obligations and the reference to the Fourth Guidebook in AB 2196—we conclude that the legislature intended “rules in place” at the time the contract was executed to encompass the RPS Program statutes and applicable Energy Commission Guidebook;~~

12. The omission of the word “eligible” in Section 399.16(d)(1) when referring to renewable resources ~~does not~~ **was intentional and** supports a conclusion that the Legislature intended to substitute POU rules for RPS Program statutes and applicable Energy Commission Guidebook as “rules in place” at the time the contract was executed for that particular subdivision;
13. **The same result is achieved whether** the rules in place for biomethane are the RPS Program statutes and the Energy Commission’s RPS Eligibility Guidebook, Third Edition **or LADWP’s approved RPS in place at the time of contract execution;**
14. The Energy Commission’s RPS Eligibility Guidebook, Third Edition does not contain any prohibition on the use of an exchange agreement for delivery of biomethane to certified facilities; and
15. The rules in place for BC Hydro are ~~the RPS Program statutes and the applicable Energy Commission Guidebook, but LADWP failed to timely file for certification of the BC hydro facilities before the deadline of December 31, 2013.~~ LADWP’s RPS.