

DOCKETED

Docket Number:	16-RPS-02
Project Title:	Appeal by Los Angeles Department of Water & Power re Renewables Portfolio Standard Certification Eligibility
TN #:	215482
Document Title:	CEC Staff Comments to Committee Proposed Decision
Description:	Staff Comments to PD
Filer:	Darlene Burgess
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	1/20/2017 4:52:00 PM
Docketed Date:	1/20/2017

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

In the Matter of:

Appeal by LADWP re
RPS Certification or Eligibility

Docket No.: 16-RPS-02

**CALIFORNIA ENERGY COMMISSION STAFF COMMENTS TO THE
COMMITTEE PROPOSED DECISION DATED JANUARY 5, 2017**

Mona Badie, Esq.
Gabriel Herrera, Esq.
California Energy Commission
Chief Counsel's Office
1516 9th Street, MS 14
Sacramento, CA 95814
Telephone (916) 654-3951
Fax (916) 654-3843
Email: mona.badie@energy.ca.gov
Email: gabe.herrera@energy.ca.gov

January 20, 2017

TABLE OF CONTENTS

I.	Introduction.....	1
II.	The Committee correctly determined that the “rules in place” referenced in the RPS statutes refers to the RPS statutory and CEC RPS Eligibility Guidebook rules, not the POU adopted rules.....	1
	A. The Committee’s Proposed Decision interpretation of the “rules in place” is consistent with the development of the RPS program into a uniform statewide program.....	2
	B. SBX1-2 provided narrowly tailored exceptions for very few POU resources that meet stringent specified criteria and did not grandfather all procurement eligible under a POU’s pre-SBX1-2 RPS rules.....	4
III.	LADWP’s renewable energy resources must meet the definition of an “eligible renewable energy resource” under Public Utilities Code section 399.12(e)(1)(C).....	4
IV.	The BC Hydro facilities do not qualify for RPS certification, therefore LADWP’s BC Hydro REC claims cannot be counted towards LADWP’s RPS procurement requirements.....	5
	A. The Committee correctly determined that certification of eligible renewable energy resources is exclusively in the Energy Commission’s purview.....	5
	B. The Committee correctly determined that certification is a prerequisite to applying RECs toward RPS program compliance and therefore LADWP’s BC Hydro procurement cannot be counted towards LADWP’s RPS procurement obligations.....	6
V.	Conclusion	6
	Appendix A	8

I. Introduction

California Energy Commission (CEC) Staff (Staff) respectfully submits these Comments in response to the Committee Proposed Decision dated January 5, 2017 (Proposed Decision).¹

Staff supports the Committee's analysis of the applicable Renewables Portfolio Standard (RPS) Statutes and its proposed decision to not count the Renewable Energy Credits (RECs) from Los Angeles Department of Water and Power's (LADWP) generation from its British Columbia hydroelectric generation (BC Hydro) facilities.²

Staff respectfully submits Appendix A, a list of Staff proposed clarifications to the Committee's Proposed Decision concerning non-material matters.

II. The Committee correctly determined that the "rules in place" referenced in the RPS statutes refers to the RPS statutory and CEC RPS Eligibility Guidebook rules, not the POU adopted rules.

Staff supports the Committee's analysis of the RPS statutory references to the "rules in place" in the Proposed Decision. As determined by the Committee, the "rules in place" referenced in Public Utilities Code sections 399.12.6 and 399.16 refer to the RPS program statutes and CEC RPS Eligibility Guidebook rules, not the local publicly owned electric utility (POU) adopted rules.³ Staff supports the Committee's conclusion that a generating facility must therefore meet the statutory definition of an eligible renewable energy resource and the requirements of the CEC RPS Eligibility Guidebook in place at the time of contract execution.⁴

//

//

¹ Committee Proposed Decision, TN 215170.

² It is not accurate to characterize all of the generation procured under LADWP's agreements with Powerex as "hydroelectric generation," because some of this generation may have originated from non-hydroelectric generating facilities. As noted in the Staff Response to the Committee's Order of July 27, 2016, TN 213474, page 63, the Powerex agreements permitted the use of non-hydroelectric generation facilities, including biomass and landfill gas. This is supported by the Powerex designation letters of Teresa Conway, dated December 7, 2009 and November 29, 2010, both of which identify several landfill gas facilities and several biomass facilities as sources of generation under the Powerex agreements (TN 213751 and TN 213387). Ms. Conway's letters tend to contradict the statement in the Declaration of Robert Campbell that the RECs sold to LADWP under the Powerex agreement were generated from a blend of "100 percent small hydroelectric generation." Refer to Mr. Campbell's Declaration, TN 213750, page 2, paragraph 8.

³ Committee Proposed Decision, TN 215170, page 29, Conclusion of Law no. 11.

⁴ Committee Proposed Decision, TN 215170, pages 21-22.

A. The Committee’s Proposed Decision interpretation of the “rules in place” is consistent with the development of the RPS program into a uniform statewide program.

SBX1-2 subjected POUs to the same RPS certification requirements applicable to retail sellers.⁵ As stated in the Proposed Decision there is no distinction between POUs and retail sellers as to what resources are eligible under the RPS program.⁶

As determined by the Committee, prior to SB X1-2, unlike retail sellers, POUs had discretion to establish and enforce their own RPS rules.⁷ Unlike retail sellers, which were required to meet their RPS procurement requirements with electricity procured from eligible renewable energy resources certified by the CEC, a POU could establish its own eligibility requirements for renewable resources to meet the POU’s RPS rules. As a result, the RPS rules for POUs could vary from POU to POU and differ from the requirements applicable to retail sellers.

After SB X1-2, POUs became subject to the same or similar RPS requirements as retail sellers.⁸ SB X1-2 requires the governing board of a POU to take actions in order for the POUs to comply with the same or similar requirements applicable to retail sellers including: procurement targets for the same compliance periods applicable to retail sellers;⁹ ensuring that quantities of eligible renewable energy resources procured for the first compliance period are equal to the same percentage required of retail sellers;¹⁰ ensuring that the quantities of eligible renewable energy resources procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure the same procurement requirements applicable to retail sellers;¹¹ requiring that the POU procure not less than 33 percent of retail sales from eligible renewable energy resources in all subsequent years, the same as retail sellers;¹² and adopting procurement requirements consistent with the procurement requirements

⁵ SBX1-2 (Stats. 2011, first ex. Sess., Ch. 1), Public Utilities Code §399.25. See also Staff Reply to LADWP’s Initial Response, TN 213757, pages 2-3.

⁶ Committee Proposed Decision, TN 215170, page 14.

⁷ Committee Proposed Decision, TN 215170, page 27. See also SB 1078 (Stats. 2002, Ch. 561).

⁸ Committee Proposed Decision, TN 215170, page 28. See also SBX1-2 (Stats. 2011, first ex. Sess., Ch. 1).

⁹ Public Utilities Code § 399.30(b); for retail sellers see Public Utilities Code § 399.15(b)(1).

¹⁰ Public Utilities Code § 399.30, subd. (c)(1); for retail sellers see Public Utilities Code § 399.15(b)(2)(B).

¹¹ Public Utilities Code § 399.30(c)(2); for retail sellers see Public Utilities Code § 399.15(b)(2)(B).

¹² Former Public Utilities Code § 399.30(c)(2); for retail sellers see Public Utilities Code § 399.15(b)(2)(B).

for retail sellers under Public Utilities Code section 399.16.¹³ Public Utilities Code § 399.30(d) also allowed a POU to adopt excess procurement, delay of timely compliance, and cost limitation measures consistent with those same measures applicable to retail sellers.¹⁴

SBX1-2 also subjected POUs to various provisions of the RPS statute that previously only applied to retail sellers. Former Public Utilities Code section 399.13(b), which directed the Energy Commission to “[d]esign and implement an accounting system to verify compliance with the renewables portfolio standard *by retail sellers*” and collect data “necessary to verify compliance *of retail sellers*” (emphasis added) became Public Utilities Code section 399.25(b) under SBX1- 2 and was amended to direct the Energy Commission to “[d]esign and implement and accounting system to verify compliance with the renewables portfolio standard *by retail sellers and local publicly owned electric utilities*” and collect data “necessary to verify compliance *of retail sellers and local publicly owned electric utilities*” (emphasis added).

Public Utilities Code section 399.25(a) (also from SBX1-2) authorizes only the CEC to certify eligible renewable energy resources for the RPS for both retail sellers and POUs. By charging the CEC with sole responsibility for determining which renewable energy resources qualify as a “renewable electrical generation facility” and for certifying such resources as eligible for the RPS, the legislature placed retail sellers and POUs on equal footing and subjected them to one set of rules, the CEC’s rules, for determining which renewable energy resources qualify under the RPS program.

If the “rules in place” provisions of Public Utilities Code sections 399.12.6(a) or 399.16(d) were to be construed, as argued by LADWP, to mean a POU’s rules rather than the CEC’s rules, there would be conflicts in how the law is interpreted and applied throughout the state. There would be one set rules for certifying facilities for retail sellers (the CEC RPS Eligibility Guidebook rules) and different sets of rules for certifying facilities for POUs (those under each POU’s pre-SBX1-2 RPS rules, which at the time could have been as many as 44 sets of rules). This would result in a facility possibly having different certification statuses depending on which utility, retail seller or POU, and which particular POU, purchased electricity from them.

¹³ Public Utilities Code § 399.30(c)(3).

¹⁴ Public Utilities Code § 399.30(d), which references Public Utilities Code §§ 399.13, 399.15(b), and 399.15(c), applicable to retail sellers.

B. SBX1-2 provided narrowly tailored exceptions for very few POU resources that meet stringent specified criteria and did not grandfather all procurement eligible under a POU's pre-SBX1-2 RPS rules.

As the Committee correctly concluded, the Legislature did not grandfather all procurement eligible under a POU's pre-SBX1-2 RPS rules. Instead, the Legislature provided narrowly tailored exceptions for a few of the POUs that meet stringent criteria.¹⁵ These narrowly tailored exceptions are set forth in Public Utilities Code sections 399.30(g), 399.30(h), 399.30(i), 399.30(j), 399.30(k), and 399.30(l), as well as other provisions from Article 16, which allowed for the incorporation of specific resources under specific conditions. The provisions of Public Utilities Code sections 399.30(k) and 399.30(l) were added by the legislature in subsequent enactments,¹⁶ and thereby further support the position that the legislature did not intend to grandfather all procurement under a POU's pre-SBX1-2 RPS rules. The legislature's approach under SBX1-2 and the subsequent enactments is apparent from these provisions and does not square with LADWP's interpretation of a wholesale grandfathering of all POU pre-SBX1-2 RPS resources under Public Utilities Code sections 399.12(e)(1)(C) and 399.16(d)(1).

III. LADWP's renewable energy resources must meet the definition of an "eligible renewable energy resource" under Public Utilities Code section 399.12(e)(1)(C).

The Committee correctly determined that Public Utilities Code section 399.16(d) requires resources to be "eligible renewable energy resources."¹⁷ This interpretation is consistent with goals and design of California's RPS program.

As stated in the Proposed Decision, every part of a statute must be given meaning.¹⁸ Eligible renewable energy resources are defined under Public Utilities Code section 399.12(e). Public Utilities Code section 399.12(e)(1)(C) requires that the Energy Commission certify a facility "if the facility is a 'renewable electrical generation facility' as defined in Section 25741 of the Public Resources Code." The Committee's interpretation of Public Utilities Code section 399.12(e)(1)(C) includes the requirement that a resource meet the definition of a "renewable

¹⁵ Committee Proposed Decision, TN 215179, page. 11.

¹⁶ Refer to Senate Bill 591 (Stats. 2013, ch. 520) and Senate Bill 350 (Stats. 2016, ch. 547) as discussed in the Staff Reply to LADWP's Initial Response, TN 213757, page 7.

¹⁷ Committee Proposed Decision, TN 215170, page 11 and 14.

¹⁸ Committee Proposed Decision, TN 215170, page 15.

electrical generation facility” from Public Resources Code section 25741. Under this reading no words or provisions under Public Utilities Code section 399.12(e)(1)(C) are rendered surplusage and every word included by the Legislature when it passed SBX1-2 is given effect. Additionally, the context of SBX1-2, with the creation of a more uniform statewide program governing retail sellers and POUs, is given effect as well.

LADWP’s interpretation of Public Utilities Code section 399.12(e)(1)(C) ignores and does not give effect to an entire clause -- “if the facility is a ‘renewable electrical generation facility’ as defined in Section 25741 of the Public Resources Code.” This would not give meaning to every part of the statute and would render an entire clause superfluous.

Furthermore, LADWP’s interpretation of Public Utilities Code section 399.12(e)(1)(C) would render even more provisions of the statute superfluous. If Public Utilities Code section 399.12(e)(1)(C) were intended to grandfather all POU resources adopted under each POU’s pre-SBX1-2 RPS rules as argued by LADWP, then the provisions of Public Utilities Code sections 399.12(e)(1)(D), 399.30(g), 399.30(h), 399.30(j), 399.30(k) and 399.30(l), would also be rendered superfluous since they would grandfather many of the same resources that would have already been grandfathered under Public Utilities Code section 399.12(e)(1)(C).

IV. The BC Hydro facilities do not qualify for RPS certification; therefore LADWP’s BC Hydro REC claims cannot be counted towards LADWP’s RPS procurement requirements.

A. The Committee correctly determined that certification of eligible renewable energy resources is exclusively in the Energy Commission’s purview.

Public Utilities Code section 399.25(a) authorizes only the CEC to certify eligible renewable energy resources for the RPS for both retail sellers and POUs.

If each POU had discretion to determine which renewable resources qualify as an “eligible renewable energy resource” for purposes of the RPS, there could be 44 different sets of rules for making this determination; one set of rules for each POU in existence in California at the time of SBX1-2’s passage. SBX1-2 repealed Public Utilities Code section 387 and any

discretion the POUs might have had in this regard, and established a single, statewide RPS program applicable to retailer sellers and POUs.¹⁹

B. The Committee correctly determined that certification is a prerequisite to applying RECs toward RPS program compliance and therefore LADWP's BC Hydro procurement cannot be counted towards LADWP's RPS procurement obligations.

As acknowledged by the Committee, LADWP never applied for certification of its BC Hydro facilities. If LADWP wanted to count the procurement of electricity generation from the BC Hydro facilities to satisfy its RPS procurement requirements, either LADWP or Powerex Corp needed to apply to the CEC for RPS certification of the facilities on or before December 31, 2013. CEC Staff has no record of either LADWP or Powerex applying for certification of the BC Hydro facilities.²⁰

V. Conclusion

Staff supports the Committee's analysis of the applicable Renewables Portfolio Standard Statutes and its proposed decision to not count the RECs from LADWP's generation from its British Columbia hydroelectric generation facilities.

//
//
//
//
//
//
//
//
//

¹⁹ Staff Response to the Committee's Order of July 27, 2016, TN 213474, pages 58-59 and Staff Reply to LADWP's Initial Response, TN 213757, pages 2-3.

²⁰ Refer to Supplemental Declaration of Courtney Smith, TN 213980, page 1, paragraph 5.

Dated this 20th day of January 2017.

Respectfully submitted,

CALIFORNIA ENERGY COMMISSION

/S/ Mona Badie

Mona Badie

MONA BADIE
GABRIEL HERRERA

Chief Counsel's Office
CALIFORNIA ENERGY COMMISSION
Chief Counsel's Office
1516 9th Street, MS 14
Sacramento, CA 95814
Telephone (916) 654-3951
Fax (916) 654-3843
Email: mona.badie@energy.ca.gov
Email: gabe.herrera@energy.ca.gov

APPENDIX A

STAFF PROPOSED CLARIFICATIONS TO THE COMMITTEE PROPOSED DECISION DATED JANUARY 5, 2017

CEC Staff proposes the following non-material clarifications and changes to the Proposed Decision for the Committee's consideration. Additions are shown in underline and the deletions are shown in strikethrough font.

Statement in the body of the Proposed Decision

Proposed Decision, page 7.

Since the Powerex agreements permitted the supply of generation from both hydroelectric and non-hydroelectric generation facilities, including biomass and landfill gas facilities, and permitted hydroelectric generation to come from no less than 23 facilities, the last paragraph on page 7 should be clarified as follows:

“In March 2007, LADWP and Powerex executed two power purchase agreements (PPAs) for LADWP's purchase of renewable energy from any one of at least ~~about~~ 23 possible small hydroelectric generating facilities with nameplate ratings of 30 megawatts or less or from non-hydroelectric generating facilities located in British Columbia, Alberta, Washington, or Oregon control areas.”

Proposed Decision, page 8.

The first full paragraph indicates that LADWP has never submitted the Powerex PPAs to the CEC for certification of the BC Hydro facilities. Since the CEC does not certify a facility based on its PPA, the language in the first full paragraph should be clarified as follows:

“LADWP has never applied ~~submitted the PPAs~~ to the Energy Commission to certify any for ~~certification~~ of the BC Hydro facilities as eligible renewable energy resources.”

Proposed Decision, page 12.

The RPS statute does allow generation from large hydroelectric generation facilities to qualify for the RPS under very limited circumstances. Therefore, the last sentence in the first full paragraph should be clarified as follows:

“The result would be entirely inconsistent with the RPS Program, which has only ~~never~~ allowed certification of large hydro facilities or RECs from large-scale hydro under very limited circumstances for efficiency improvements consistent with Public Utilities Code section 399.12.5, and as permitted by the specific exemptions in Public Utilities Code sections 399.30(j), 399.30(k), and 399.30(l).”

Proposed Decision, page 22.

In support of the Committee’s conclusion regarding the “rules in place” provisions of Public Utilities Code section 399.12.6, the top paragraph on page 22 should identify the legislature’s reference to the CEC’s “Fourth Edition” Guidebook. The Committee references the “Fourth Edition” Guidebook language in Conclusions of Law paragraph 11, but not in the top paragraph on page 22.

Findings of Fact

Since the Powerex agreements permitted the supply of generation from both hydroelectric and non-hydroelectric generation facilities, including biomass and landfill gas facilities, and permitted hydroelectric generation to come from no less than 23 facilities, paragraph 5 should be clarified as follows:

5. In 2007, LADWP entered into two contracts with Powerex for the procurement of hydroelectric and non-hydroelectric energy from any of at least 23 facilities located in any of two states and two Canadian provinces (BC Hydro);

Conclusions of Law

2. Under SB 1078 local publicly owned electric utilities (POUs) were not subject to the RPS procurement obligations . . .

12. The omission of the word “eligible” in Section 399.16(d)(1) when referring to renewable energy resources does not support a conclusion . . .