

DOCKETED

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Los Angeles



Department of Water & Power

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May 8, 2017

VIA OVERNIGHT DELIVERY AND ELECTRONIC MAIL

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**Re: In the Matter of: Appeal by LADWP re RPS Certification or Eligibility,
Docket No. 16-RPS-02**

Dear Chair Weisenmiller and Commissioner Hochschild:

Inasmuch as Commissioner Hochschild was unable to attend the meeting on May 1, 2017, which I had requested with the two of you, and inasmuch as the reason I had made that request was to attempt to communicate directly with the two of you on policy matters which I believe would form a basis for the Committee to revise its proposed decision in a manner that avoids a "lose-lose" situation between DWP and the CEC, I am taking the liberty of sending this letter summarizing the policy points I made at the May 1 meeting. The points are these:

1. The Committee's tentative recommendation rests primarily on a retroactive application of SBX1-2, which in my legislative experience at both the state and the federal level, is considered to be contrary to due process and generally viewed as inappropriate. The relevant DWP contracts were signed in March 2007 and expired on December 31, 2011. Thus, they were entered into more than four years prior to the enactment of SBX1-2 and, when they were entered into, CEC approvals were not required for DWP, and DWP was acting within the framework of the aggressive and appropriate RPS objectives of the Los Angeles City Council and the DWP Board of Water and Power Commissioners. Furthermore, the interpretation of "rules in place" in the proposed decision is now nearly a decade after the contracts were executed, and it would

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have been impossible to contemplate in 2007 what the statutory language would be in 2011, or the Committee's interpretation in 2017. DWP is seeking credit only for BC hydro contracts up until the day before SBX1-2 took effect. A retroactive application of law in this area will have a chilling effect on subsequent efforts of DWP and others to enter into appropriately approved RPS projects, which, under such retroactive application of standards, could subsequently be nullified by newly enacted laws and/or regulations.

2. The Legislature clearly intended to grandfather past RPS contracts which had been appropriately executed by local publicly owned electric utilities (POUs). The language and the legislative history of SBX1-2 are clear as to this intent: Public Utilities Code Section 399.16(d)(1) reads: "Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full toward the procurement requirements" where the "renewable energy resource was eligible under the rules in place as of the date when the contract was executed." At least six different legislative committees underscored the Legislature's intent to grandfather RPS contracts entered into under the prior voluntary RPS program for POUs. To suggest that our contracts needed to be specifically named by the legislation in order for the grandfathering to apply is a strained interpretation of the language of the bill and the expressed intent of the various legislative committees. I respectfully ask that you re-examine the proposed decision on this point.

3. DWP and the CEC have common interests here: both agencies are working hard to maximize the use of renewables in order to aggressively meet California's greenhouse gas targets and be leaders to the rest of the country. DWP was, in fact, an innovative pioneer in approving and implementing such policies, having expended over \$1 billion on renewables and commencing these actions well before the State of California had any targets or requirements that POUs or investor owned electric utilities engage in such investments. DWP is currently studying the potential of getting to 100% renewables. The CEC is undermining its objective to encourage renewables by not counting DWP's renewable investments based on a retroactive interpretation. Also, the proposed decision, if adopted by the CEC, could result in the imposition of a potential penalty of over \$22 million, which DWP cannot afford to go unchallenged.

4. It is especially disappointing that DWP and the CEC are at loggerheads regarding contracts that expired almost six years ago given the symbiosis of policies between DWP and the CEC. Rather than expending scarce public resources here, the CEC and the City of Los Angeles should focus such resources on the high stake conflicts with the current administration in Washington, D.C. Especially when California and Los Angeles are both engaged in efforts to resist the anti-environmental agenda of the current administration in Washington, it would be ironic and counter-productive for the CEC to punish DWP under circumstances where the punishment is predicated on the retroactive application of legislation which grandfathered this type of investment in renewables. Enacting a policy which would force DWP to litigate with the CEC under these circumstances will only undermine the perception that California and its largest city are on the same page on these critically important issues at a time when unity and common purpose are especially important.

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As a reminder, counting the renewable energy credits from DWP's BC hydro contracts towards the first compliance period target could be fashioned under the CEC's discretion, including authority found in Public Resources Code Section 25218. For example, the CEC could provide DWP an equivalent form of RPS-credit based on the amount of renewable energy procured under the BC hydro contracts (measured on a MW/h basis). The discretion afforded the CEC is exactly what was intended by the Legislature, to avoid protracted litigation, especially where the policy goals between DWP and the CEC were aligned.

In closing, I emphasized at the May 1 meeting -- and want to continue to emphasize -- DWP's commitment and desire to work closely with the CEC in order to insure that California remains a leader in combating climate change and investing in clean energy and sustainability. We should be collaborating, not forced into conflict on a matter which hardly requires the result which the Committee recommends in the proposed decision. I ask again that we work towards finding a mutually acceptable resolution of this matter outside of the courts.

Very truly yours,



Mel Levine
President
Board of Water and Power Commissioners

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