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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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IN THE MATTER OF: ***APPEAL BY LADWP RE RPS CERTIFICATION OR ELIGIBILITY***	**Docket No. 16-RPS-02**

COMMITTEE PROPOSED DECISION*

Summary

This decision arises from an appeal by the Los Angeles Department of Water and Power (LADWP) of the Energy Commission's implementation of the California Renewables Portfolio Standard Program (RPS Program).

From its inception, the goal of the state's RPS Program has been to meet renewable energy targets by imposing certain obligations on retail sellers. However, it was not until the December 2011 enactment of SBX1-2 (Stats. 2011-2012, 1st Ex. Sess., Ch. 1, Simitian), that the RPS Program ~~explicitly~~ required local publicly owned electric utilities such as LADWP to meet specified procurement targets within designated compliance periods.

The California Public Utilities Commission (CPUC) and the Energy Commission implement the RPS Program. Among other duties, the Energy Commission certifies *eligible renewable energy resources* whose electrical generation can be credited toward RPS Program compliance.

LADWP applied for certification of its Scattergood, Harbor, Valley, and Haynes generating stations as eligible renewable energy resources. The certification applications identified these facilities' use of pipeline biomethane procured under agreements executed in 2008 and 2009 with Shell Energy North America, L.P. and Atmos Energy Marketing, LLC (collectively, Biomethane Agreements). The Energy

* Additions to the January 5, 2017 Committee Proposed Decision (TN 215170) are marked with a grey background. Deletions are marked as ~~struck-through~~ text.

Commission's Executive Director and staff (collectively, Commission staff) denied LADWP's certification applications.

LADWP timely appealed the denial and the matter was assigned for hearing by a committee comprised of two Commissioners.[1] At LADWP's request, the committee expanded the scope of the appeal proceeding to also address LADWP's request that renewable energy credits from electrical generation from British Columbia hydrogeneration (BC Hydro) facilities be credited toward LADWP's RPS Program procurement obligations.

In this decision, we determine:

- LADWP's Scattergood, Harbor, Valley, and Haynes generating stations are eligible renewable energy resources and their electricity generation under the Biomethane Agreements, upon verification by staff, will count in full toward LADWP's RPS Program procurement obligations.
- The renewable energy credits ~~from the generation~~ from the BC Hydro generation cannot be counted toward LADWP's RPS Program procurement obligations.

The California Renewables Portfolio Standard Program (RPS Program)

The California Renewable Portfolio Standard Program (RPS Program) was initially enacted in 2002, and has been modified and expanded a number of times in the interim. At issue in this proceeding is language contained in two separate modifications that provides for specific treatment of renewable resources and their generation that were eligible under the "rules in place" at the time of the contract was executed.[2] Although the question of what rules are "the rules in place at the time the contract was executed" has arisen differently in the parties' discussion of biomethane than it has in the discussion of BC Hydro and in different statutory contexts, we must answer it in order to resolve both sets of issues. To understand the use of the language within the historical framework of the RPS Program, we provide the following timeline.

[1] LADWP filed a petition for reconsideration on March 28, 2014, which Energy Commission staff denied on December 22, 2015, which was followed by LADWP's timely appeal to the full Energy Commission on January 21, 2016. (TN 213426, LADWP Petition for Reconsideration; TN 213427, Energy Commission Staff Response to LADWP Petition for Reconsideration; TN 211752-1, LADWP Letter of Appeal for Denying LADWP's Petition for Reconsideration; TN 211752-4, Form CEC-108, Service on Chief Counsel.).

[2] Sen. Bill SBX1-2 (2011-2012, 1st Ex. Sess.); Assem. Bill No. 2196 (2011-2012 Reg. Sess.)

January 1, 2003 through December 9, 2011 – RPS Program Applicable to Retail Sellers. POUs Operating Under Individual Programs Established Pursuant to Section 387.

Senate Bill 1078 (Stats. 2002, Ch. 516, Sher) (SB 1078) created the RPS Program "in order to attain a target of 20 percent renewable energy for the State of California and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix." (Public Utilities Code, § 399.11(a).)[3] The RPS Program became effective on January 1, 2003. The CPUC and Energy Commission were tasked with implementing the RPS Program.

The CPUC's duties included establishing a "renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of output from eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year," subject to exceptions. (§ 399.15(a).) The CPUC was also to implement annual procurement targets for each electrical corporation such that beginning January 1, 2003, each would increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales were procured from eligible renewable energy resources no later than December 31, 2017. (§ 399.15 (b)(1).)[4]

The Energy Commission was to (1) certify eligible renewable energy resources that it determined met statutory criteria, (2) design and implement an accounting system to verify retail seller compliance with the renewables portfolio standard to ensure that renewable energy output is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, and (3) allocate and award supplemental energy payments to eligible renewable energy resources to cover above-market costs of renewable energy. (§ 399.13.) This latter requirement, and the RPS Program as a whole, complemented the existing Renewable Energy Resources Program, which was implemented by the Energy Commission and provided education

[3] All statutory references are to the Public Utilities Code unless otherwise indicated.

[4] The terms, renewables portfolio standard, retail seller, and electrical corporation are all defined terms. At no time did the definition of retail seller include a local publicly owned electric utility. Eligible renewable energy resource has always referred to an electric generating facility that (1) uses statutorily specified fuel types such as, but not limited to, biomass, small hydroelectric generation of 30 megawatts or less, digester gas, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology and (2) meets requirements specific to the fuel type and geographic location of the facility. (§§ 383.5, 399.12(a)(1)(1) (as in enrolled bill).)

and financial resources in support of renewable energy. The two programs often referred to the same statutes for definitions.[5]

SB 1078's focus was on ensuring that retail sellers met specified procurement targets. However, separate from the RPS Program established in Article 16 of the Public Utilities Code, it also required local publicly owned electric utilities (POUs) to contribute to the legislation's goals by placing certain duties on POUs. POUs were to implement and enforce a renewables portfolio standard "that recognize[d] the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement." (§ 387(a).) POUs were also required to make annual reports to their customers about renewable procurement and expenditures. (§ 387(a), (b).)[6] Section 387 did not obligate POUs to meet specified procurement targets nor meet any other requirements set forth in Article 16.

In January 2007, various RPS Program statutes were modified by the enactment of Senate Bill 107 (Sen. Bill. No. 107 (2005-2006 Reg. Sess.)), which imposed additional duties on POUs and the Energy Commission. For example, POUs were now required to provide to the Energy Commission the annual reports they were already required to provide to their customers, and were required to include new content in the reports. (§ 387(b)(1)-(3).) The Energy Commission was now required to establish a system for tracking and verifying renewable energy credits (RECs). (§ 399.13.)

Beginning April 2004, the Energy Commission adopted Renewables Portfolio Standard Eligibility Guidebooks specifying the process and criteria it would use to make certification determinations and describing how the Energy Commission would track and verify compliance with the RPS. The Third and Fourth editions are most pertinent to this decision. The Third Edition was adopted December 19, 2007, and the Fourth Edition was adopted December 15, 2010.

Regarding biomethane, the Third Edition Guidebook focused on "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 to California for used in an

[5] Senate Bill 1038 (Sen. Bill. No. 1038 (2001- 2002 Reg. Sess.)), which also took effect on January 1, 2003, extended the collection of a non-bypassable system benefit charge initiated by prior legislation. The goal of SB 1038 was to establish a competitive, self-sustaining renewable energy supply for California while increasing the near-term quantity of renewable energy generated in-state.

[6] At all relevant times, a POU included a municipality or municipal corporation operating as a "public utility" furnishing electric service as provided in Section 10001, a municipal utility district furnishing electric service formed pursuant to Division 6 (commencing with Section 11501). (See, e.g. former §§ 399.12 (b)(4)(C) and 9604(d) and current 224.3.)

RPS Program-certified facility. The Third Edition Guidebook imposed heat content and quality requirements but was silent as to specific delivery requirements.[7] It was not until adoption of the Fourth Edition of the Guidebook that the Energy Commission specified delivery criteria for RPS Program-eligible pipeline biomethane.[8]

December 10, 2011 – SBX1-2 Brings POUs into the RPS Program.

SBX1-2 took effect on December 10, 2011, and made significant changes affecting POUs. Generally, the requirements of the RPS program were now applicable to local POUs.[9] Specifically, SBX1-2:

- repealed section 387 which directed POUs to implement their own renewable portfolio standard.[10]
- directed POUs to implement a renewable energy resources procurement plan requiring them to procure a minimum quantity of electricity products from eligible renewable energy resources (including renewable energy credits). (§ 399.30 (a).)
- obligated POU governing boards to adopt procurement targets reflecting minimum quantities of eligible renewable energy resources for each of three compliance periods: January 1, 2011 through December 31, 2013; January 1, 2014 through December 31, 2016; and January 1, 2017 through December 31, 2020. (§ 399.30(b).)
- obligated POUs to adopt procurement requirements as specified by the RPS Program, including requirements for a balanced portfolio of procurement of three content categories. (§§ 399.30(c), 399.16.)

SBX1-2 included several "grandfathering provisions": two in particular are pertinent to this decision. Section 399.12(e)(1)(C), which applied only to POUs, provided that "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 if the facility meets the definition of a renewable electrical generation facility …"

[7] TN 213249, RPS Eligibility Guidebook Third Edition, pp. 20-21.
[8] TN 213250, RPS Eligibility Guidebook Fourth Edition, pp. 18-21.
[9] SBX1-2, Section 3. SBX1-2 made other changes, including, but not limited to, giving the Energy Commission enforcement authority with respect to POUs and requiring the Energy Commission to adopt regulations specifying the procedure for enforcing the RPS Program requirements as applied to POUs.
[10] SBX1-2, Section 12.

The other provision, Section 399.16(d), applied to POUs and retail sellers. It provided in pertinent part, that "[a]ny contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to [Public Utilities Code Article 16], if … (1) [t]he renewable energy resource was eligible under the rules in place as of the date the contract was executed…"

SBX1-2 also permitted governing bodies of POUs to adopt measures (compliance options) to allow for actions including delaying timely compliance and setting cost limitations for procurement expenditures. (§ 399.30(d).)

January 1, 2013 – AB 2196 Provides Biomethane-specific Grandfathering Provision.

With the enactment of Assembly Bill 2196 (Stats. 2012, Ch. 605, Chesbro), effective January 1, 2013, the Legislature adopted provisions to "… specify that certain biomethane procurement contracts executed by a retail seller or local publicly owned electric utility prior to March 29, 2012, count in full toward the RPS program's procurement requirements under the rules applicable to eligible renewable energy resources contracts at the time the procurement contracts were executed, if specified conditions are met." (AB 2196 Legislative Counsel's Digest, p. 1.)[11]

In particular, AB 2196 added Section 399.12.6, which allowed certain pipeline biomethane procurement to count in full toward procurement targets and defined "biomethane." It stated:

> (a)(1) Any procurement of biomethane delivered through a common carrier pipeline under a contract executed by a retail seller or local publicly owned electric utility and reported to the Energy Commission prior to March 29, 2012, and otherwise eligible under the rules in place as of the date of contract execution shall count toward the procurement requirements established in this article, under the rules in place at the time the contract was executed, including the Fourth Edition of the Energy Commission's Renewables Portfolio Standard Eligibly Guidebook, provided that those rules shall apply only to sources that are producing biomethane and injecting it into a common carrier pipeline on or before April 1, 2014.
>
> [¶]
>
> (g) For the purposes of this section, "biomethane" means landfill gas or digester gas, consistent with Section 25471 of the Public Resources Code.

[11] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB2196

To implement the changes to Section 399.12.6, AB 2196 also modified the definition of "renewable electrical generation facility" in Public Resources Code section 25741 to specially address facility eligibility based on the use of fuel including landfill gas and digester gas. Section 25471(a)(4) provided:

> If eligibility of the facility is based on the use of landfill gas, digester gas, or another renewable fuel, delivered to the facility through a common carrier pipeline, the transaction for the procurement of that fuel, including the source of the fuel and delivery method, satisfies the requirements of Section 399.12.6 of the Public Utilities Code and is verified pursuant to the accounting system established by the commission pursuant to 399.25 of the Public Utilities Code, or a comparable system…

The Energy Commission adopted the Seventh Edition Guidebook on April 30, 2013, which also included eligibility provisions specific to pipeline biomethane.[12]

Discussion

Resolution of both the biomethane and BC Hydro issues requires us to evaluate the significance of the defined term "eligible renewable energy resource" and the meaning of the phrase "rules in place" as they are used in the RPS Program. We begin this analysis in Part 1 of the discussion below, which focuses on the BC Hydro issues and complete it in Part 2, which focuses on the biomethane issues.

Both parts are based on evidence submitted by LADWP and Commission staff in this proceeding and on documents or information for which official notice has been taken.

Part 1. British Columbia Hydroelectric Generation

LADWP and Staff disagree about whether the BC Hydro facilities must be certified by the Energy Commission as eligible renewable energy resources in order for the RECs from the electricity generated by those facilities to count in full toward LADWP's RPS Program procurement obligations.

A. Fact Summary

In March 2007, LADWP and Powerex executed two power purchase agreements (PPAs) for LADWP's purchase of renewable energy from any one of about 23 possible small hydroelectric generating facilities with nameplate ratings of 30 megawatts or less located in the British Columbia, Alberta, Washington, or Oregon control areas.[13] On

[12] TN 213251, RPS Eligibility Guidebook Seventh Edition, acknowledgments page.
[13] TN 212401 [Ting Decl.], ¶¶ 21-22 [TN 212419, BC Hydro Agreement No-BP 05-020-A, and TN 212420, BC Hydro Agreement No-BP 05-020-B. Collectively referred to as

March 6, 2007, LADWP's Board adopted Resolution No. 007-166, which approved the Powerex BC-Hydro PPAs.[14] The term of the PPAs was from April 2007 to December 2011.[15]

LADWP submitted REC Claims for BC-Hydro to meet their procurement requirements for Compliance Period 1.[16] Neither LADWP nor Powerex has ~~never submitted the PPAs~~ applied to the Energy Commission ~~for certification~~ to certify any of the BC Hydro facilities as eligible renewable energy resources.[17] The deadline to file an application for certification was December 31, 2013.[18]

B. Analysis

LADWP argues that it had no statutory obligation to seek certification of the small-hydroelectric generating facilities that provided energy to LADWP under the Powerex BC Hydro PPAs.[19] LADWP specifically contends that certification was not required because of the grandfathering provisions of Section 399.16(d).[20] LADWP alternately argues that that Sections 399.16 (d) and 399.12 (e)(1)(C) operate together to certify as a matter of law all pre-June 1, 2010 procurement that was considered eligible under LADWP's pre-SBX1-2 renewables portfolio program, whether or not the procurement was from an "eligible renewable energy resource."[21]

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the Powerex BC Hydro PPAs.]. We acknowledge that the PPA's allowed for the use of other non-hydro resources, but the record shows that LADWP seeks only to claim RECs for generation from hydroelectric generating facilities. TN 213374-85, Monthly BC Hydro Attestations (January 2011-December 2011).

[14] TN 212401, Ting Decl., ¶ 15 [TN 212413, BC Hydro Resolution-007-166].

[15] TN 212401 [Ting Decl.], ¶¶ 21-22 [TN 212419, BC Hydro Agreement No-BP 05-020-A and TN 212420, BC Hydro Agreement No-BP 05-020-B, § 3.1 (Effective Date and Term) and § 1.1 (Definition of Commencement Date)].

[16] TN 213346, Declaration of Sharat Batra in 16-RPS-02, ¶¶5-41 [TN 213347-213356, 213358-213359, 213361-213363, 213365-213385, Monthly BC Hydro Invoices and Attestations (January 2011-December 2011) and Payment History (January 2011-January 2012)].

[17] TN 212400, LADWP's Motion to Add and Consolidate Additional RPS-Eligibility Claims in 16-RPS-02, p. 11.

[18] TN 213251, RPS Eligibility Guidebook, Seventh Edition, pp. 78-79.

[19] TN 213475, LADWP's Initial Response, p. 59; TN 213758, LADWP's Reply Response, p. 20.

[20] TN 213475, LADWP's Initial Response, p. 59; TN 213758, LADWP's Reply Response, pp. 5, 20.

[21] TN 213475, LADWP's Initial Response, pp. 43, 64.

According to LADWP, Section 399.16(d), is a standalone provision that exempts the BC Hydro facilities from the Energy Commission's certification process.[22] Section 399.16 (d) states in pertinent part:

> (d) Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to [Public Utilities Code Article 16], if all of the following conditions are met:
>
> (1) The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.

(Underline added.)

There appears to be no dispute among the parties that "count in full" means that the generation that the retail seller or POU obtained as a result of these agreements can be used to satisfy RPS procurement obligations. The parties do, however, dispute the meaning of "rules in place."

LADWP suggests that allowing the BC Hydro electricity generation to be credited toward its renewable procurement obligations is a simple matter of determining whether the contract was approved by LADWP's governing board in furtherance of its renewables portfolio program under former Public Utilities Code section 387. This interpretation presumes that the only applicable "rules in place" are POU rules and, in this case, LADWP's procurement and eligibility rules.[23]

Energy Commission staff, on the other hand, asserts that construing "rules in place" to mean "POU rules" could result in counting in full procurement from facilities that do not qualify as eligible renewable energy resources under Section 399.12(e)(1)(C).[24] Accordingly, says staff, "rules in place" must refer to the applicable Energy Commission's Guidebook and the RPS Program definition of an "eligible renewable energy resource" in place at the time the contracts were executed.[25]

We recognize that giving meaning to "rules in place" requires us consider the entire phrase "the renewable energy resource was eligible under the rules in place as of the date when the contract was executed." And, we must determine whether the

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[22] TN 213475, LADWP's Initial Response, p. 59; TN 213758, LADWP's Reply Response, pp. 5, 20; TN 213985, LADWP's Statement of Disputed Facts, #224.
[23] TN 213475, LADWP's Initial Response, pp. 37.
[24] TN 213474, Staff Response to Committee Questions, p. 86.
[25] TN 213474, Staff Response to Committee Questions, pp. 44-48 (Second Edition RPS Guidebook includes statutory requirements.).

Legislature deliberately refrained from using the key RPS Program term "eligible renewable energy resource" in Section 399(d)(1).

Rules of statutory interpretation require us to first assume that the Legislature's word choice was intentional. Specifically, "[w]hen legislation uses two different, if not similar, phrases, canons of statutory construction require us to presume that the Legislature made the distinction between the two phrases deliberately and to give effect to the distinction unless the whole scheme reveals that the distinctions are unintended." (58 Cal. Jur 3d Statutes § 83; *Jurcoane v. Superior Court* (2001) 93 Cal. App. 4th 886, 894, 113 Cal. Rptr. 2d 483, 488.) We look to the statute as a whole for guidance on whether "renewable energy resources" within Section 399.16(d)(1) can reasonably mean something other than "eligible renewable energy resources." (See *City of Alhambra v. County of Los Angeles,* 55 Cal.4th 707, 726 (2012) ["The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature apparent by the statute; and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act."].)

Looking to SBX1-2[26] as a whole, the legislation is rife with examples that the Legislature intended only "eligible renewable energy resources" to count toward RPS procurement requirements. For instance, the stated purposes of the legislation were to:

- increase the amount of electricity generated from eligible renewable energy resources per year (Pub. Res. Code, § 25740.)
- attain a target of generating 20 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2013, and 33 percent by December 31, 2020… (§ 399.11(a).)
- achieve the renewables portfolio standard through the procurement of various electricity products from eligible renewable energy resources (§ 399.11(b).)
- supply electricity to California end-use customers that is generated by eligible renewable energy resources, which is necessary to improve California's air quality and public health. (§ 399.11(e)(1).)

In addition, key RPS Program definitions establish that *only* "eligible renewable energy resources" can meet the requirements of the renewable portfolio standards:

[26] We look to SBX1-2, specifically, because this is the legislation that added both section 399.16(d)(1) and section 399.12(e)(1)(C) to the RPS Program.

- "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller *or a local publicly owned electric utility is required to procure pursuant to this article*. (§ 399.12(i), underline and italic added.)

- "Renewable energy credit" means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, issued through the accounting system established by the Energy Commission pursuant to Section 399.25, that one unit of electricity was generated and delivered by an eligible renewable energy resource. (§ 399.12 (h)(1). Underline added.)

Furthermore, looking to the whole of Public Utilities Code Article 16, in which most of the RPS Program statutes are codified, it is apparent that the Legislature did not grandfather all procurement eligible under a POU's pre SBX1-2 renewables portfolio program. Instead, it provided narrowly tailored exceptions for the very few POUs that meet the stringent criteria. (See § 399.30.)

The above-mentioned examples lead us to determine that by using the phrase "eligible under the rules in place at the time of contract execution," the Legislature did not intend to relieve POUs of the obligation to procure generation from eligible renewable energy resources to receive credit toward their RPS Program obligations.

We also considered whether the legislature's use of the phrase "renewable energy resources" instead of the defined term "eligible renewable energy resources" was, as LADWP contends, intended to provide an exception to the general rule that POU RPS Program obligations must be met through procurement of eligible renewable energy resources. When we look to Section 399.16 as whole (of which 399.16(d)(1) is a part), we find that two other provisions of this statute use the phrase "renewable energy resources" instead of "eligible renewable energy resources." For example, Section 399.16(c)(3) states: "Any renewable energy resources contracts executed on or after June 1, 2010, not subject to the limitations of paragraph [399.16(c)] (1) or (2)], shall meet the product content requirements of paragraph (2) of subdivision [399.16] (b)." (Underline added.) In turn, Section 399.16 (b) states in pertinent part: "Consistent with the goals of procuring the least-cost and best-fit electricity products from eligible renewable energy resources that meet project viability principles adopted by the [CPUC] …and that provide the benefits set forth in Section 399.11 [specifying the purposes of the RPS Program], a balanced portfolio of eligible renewable energy resources shall be procured consisting of the following portfolio content categories …" (Underline added.) Taken together, Section 399.16 (b) and (c)(3) establish a clear expectation (and requirement) that Section 399.16 (~~b~~d) only be satisfied with contracts involving "eligible renewable energy resources" even though the legislature used the term "renewable

energy resources." It is implicit, then, in this context, that "renewable energy resources" means "eligible renewable energy resources."

In addition, Section 399.16(d)(3), shown in context, states:

> (d) Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to [Public Utilities Code Article 16], if all of the following conditions are met:
>
> (1) The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.
>
> [¶¶]
>
> (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.

(Underline added.)

The consequence of reading subsections (d)(1) and (d)(3) taken together to allow the use of *any* resource a POU deemed eligible under its renewables portfolio standard program is that it could, for instance, use generation from hydroelectric generating facilities with nameplate ratings of 30 megawatts or more (large-scale hydro) for the duration of the initial contract entered into prior to June 1, 2010, and if the contract was extended by future amendments, for untold years into the future~~, under an amended procurment contract~~. The result would be entirely inconsistent with the RPS Program, which has never generally allowed certification of large-hydro facilities or RECs from large-hydro facilities.[27] And large-hydro is just one example – if "rules in place" meant "POU rules," then any resource a POU allowed under its own renewable procurement policy, no matter how incongruent with the Article 16 eligibility requirements, would count towards a POU's Article 16 procurement obligations as long as the contract was entered into by the statutory deadline, even if amended in the future.

[27] In its comments on the Committee's Proposed Decision, staff provided a clarification regarding certification of large-hydro. According to the comments, under very limited circumstances, staff has allowed certification for efficiency improvements to facilities of 30 megawatts or less consistent with section 399.12.5, and as permitted by the specific exemptions in sections 399.30(j)-(l). TN 215482, Staff Comments to Committee Proposed Decision, p. 9.

We further determine that the legislative history of SBX1-2 does not compel a different conclusion. LADWP would have us find that ~~two isolated excerpts from~~ legislative ~~committee reports~~ history demonstrates the Legislature's clear intent for all of a POU's procurement under its Section 387 program be grandfathered and count in full. ~~The excerts are~~ LADWP cites, for example, the following excerpts from legislative committee reports:

> "Under the bill [SBX1-2], all existing renewable energy contracts signed by June 1, 2010 would be 'grandfathered' into the program. Going forward, new renewable energy contracts must meet a loading order that categorizes renewable resources."[28]

And,

> "This bill [SBX1-2] grandfathers all contracts consummated by an IOU, ESP or POU prior to June 1, 2010. Going forward all contracts for an electricity product would be required to meet the requirements of a "loading order" that mandates minimum and maximum quantities of three product categories (or "buckets") …"[29]

~~Neither excerpt supports LADWP's claim.~~ Neither of these excerpts, or other legislative history in the record,[30] support LADWP's claim that 399.16(d)(1) operates to allow *all*

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[28] TN 213450, SBX1-2 Leg Hist - Senate Appropriations Committee Fiscal Summary Staff Comments Feb 23 2011, p. 2; TN 213475, LADWP's Initial Response, pp. 52-59; TN 213758, LADWP's Reply Response, p. 16.

[29] TN 213449, SBX1-2 Leg Hist - Senate Energy ~~U&C~~, Utilities & Communications Committee Bill Analysis ~~SBX1-2 Feb~~, February 15**,** 2011, p. 1; TN 213475, LADWP's Initial Response, pp. 52-59; TN 213758, LADWP's Reply Response, p. 16.

[30] We have considered all of the legislative history in the record, including: TN 213429, AB 2196 Leg Hist - Senate Energy, Utilities & Communications Committee, June 25, 2012; TN 213430, AB 2196 Leg Hist - Assembly Analysis, September 1, 2012; TN 213449, SBX1-2 Leg Hist - Senate Energy Utilities & Communications Committee Bill Analysis, February 15, 2011; TN 213450, SBX1-2 Leg Hist - Senate Appropriations Committee Fiscal Summary Staff Comments, February 23, 2011; TN 213451, SBX1-2 Leg Hist - Senate Rules Committee Senate Floor Analysis, February 23, 2011; TN 213452, AB 2196 Leg Hist - Assembly Analysis, May 15, 2012; TN 213453, AB 2196 Leg Hist - Senate Rules Committee Senate Floor Analysis, August 31, 2012.

The Committee declines to consider the 2016 and 2017 letters to the Commissioners (TN 213431, TN 213432, and TN 215837) as legislative history for two primary reasons. First, "[l]etters expressing the opinions of individual legislators are often irrelevant to an issue of statutory construction, which depends on the intent of the entire Legislature, not of individual legislators." (*City of Brentwood v. Central Valley Regional Water Quality*

generation that a POU determined to be eligible under its Section 387 program or policy, to count in full. At best, they provide generalized statements of SBX1-2's intended effect, leaving out precise details found in other RPS Program statutes addressing procurement obligations.

And, ~~they~~ the legislative history materials submitted by LADWP do not stand alone. We identified a committee report specifically addressing the Legislature's intent to ease POU and small independently owned utility procurement obligations**.** The report stated that SBX1-2 added new exceptions for "certain small IOUs and POUs, relaxing these utilities' obligations to procure eligible renewable energy resources, according to their particular circumstances." (Committee report from March 7, 2011 hearing of the Assembly Committee on Natural Resources, page 4, underline added.) This language, in conjunction with the targeted and specific provisions enacted for all exceptions to the obligation to procure eligible renewable energy resources, supports a conclusion that the Legislature did not intend the vaguely worded Section 399.16(d) to provide complete relief from the fundamental obligation to procure generation from eligible renewable energy resources for pre-June 1, 2010 procurement of POUs with Section 387 programs.

And, the SBX1-2 Legislative Counsel's Digest, explains that SBX1-2 intended for the RPS Program to change the status quo relative to POUs:

> "Under existing law, the governing board of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard for the utility that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.
>
> "This bill would repeal this provision, and instead generally make the requirements of the RPS program applicable to local publicly owned electric utilities, except that the utility's governing board would be responsible for implementation of those requirements, instead of the PUC, and certain enforcement authority with respect to local publicly owned

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Control Board (2004) 123 Cal.App.4th 714, 728, citing *Quintano v. Mercury Casualty Co*. (1995) 11 Cal.4th 1049, 1062 & fn. 5.) And second, the post hoc opinions proffered by LADWP could not have been considered by the Legislature when it was debating the bill. (*Grupe Development Company v. Superior Court of San Bernardino County* (1993) 4 Cal.4th 911, 922 [Legislative Counsel opinion was not legislative history because it was issued after the statute was adopted and could not have been considered by the Legislature when it was debating the bill].)

> electric utilities would be given to the Energy Commission and State Air Resources Board, instead of the PUC."

(SBX1-2 Legislative Counsel's Digest, subsection (3). Underline added.)[31]

The only distinction made between POUs and retail sellers relates to implementation and enforcement, and not to what resources are eligible under the RPS Program.

Based on the foregoing discussion, we conclude that Section 399.16 requires LADWP to first establish that the BC Hydro facilities met the definition of an eligible renewable energy resource when the Powerex BC Hydro PPAs were executed. And, application of Section 399.12(e)(1)(C) to the BC Hydro facilities does not result in their certification.

Section 399.12 states in pertinent part:

> For purposes of this article, the following terms have the following meanings:
>
> (e) "Eligible renewable energy resource" means an electrical generating facility that meets the definition of a "renewable electrical generation facility" in Section 25741 of the Public Resources Code, subject to the following:
>
> [(1)](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.

(Underline added.)

Section 25741 defined a "renewable electrical generation facility" as one that uses one of several specified fuel types including, but not limited to, small hydroelectric generation of 30 megawatts or less, and that satisfies requirements specific to in-state, out-of-state, and out of-country facilities. (Pub. Resources Code, §25741(a)(1), (2).) "If the facility is outside the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state." (§25741(a)(3).)

LADWP treats the phrase "if the facility is a "renewable electrical generation facility" as defined in Section 25741 of the Public Resources Code" as mere surplusage. According to LADWP, because Section 399.25 already imposed a statutory obligation on the Energy Commission to certify eligible renewable resources that met the requirements of

[31] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120121SB2

Section 399.12, 399.12(e)(1)(C) could have no effect as a grandfathering provision if it applied the same standard.[32] Therefore, says LADWP "[t]he only reasonable construction that gives meaning to Section 399.12(e)(1)(C) is that SBX1-2 required that the CEC certify a POUs' new renewable procurement going forward under the then-existing standards, while Section 399.12(e)(1)(C) mandated that the CEC certify POUs' resources adopted under Section 387 as "eligible renewable resources" based on the POUs' eligibility criteria."[33]

We disagree. We first note that a basic principle of statutory interpretation is that courts should "give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed." (*Montclair v. Ramsdell* (1883) 107 U.S. 147, 152.) In other words, statutes should be construed "so as to avoid rendering superfluous" any statutory language: "A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant...." (*Rodriguez v. Superior Court* (1993) 14 Cal.App.4th 1260, 1269.) Consistent with these principles, if Section 399.12(e)(1)(C) can reasonably be construed as a grandfathering provision, it is applicable *only* to those POUs who complied with Section 387 and adopted a renewables portfolio standard, as long as the proffered resource was eligible under the RPS Program definition of eligible renewable energy resource.[34]

LADWP has not shown that the BC Hydro facilities satisfy 399.12(e)(1)(C). Indeed, that is a determination for Energy Commission staff to make when processing a certification request. (§399.25(a)) And, certification is a necessary prerequisite for applying RECs toward RPS Program compliance. (§399.12(h), (i).) Staff is precluded from making this determination regarding the BC Hydro RECs because LADWP did not seek certification of the BC Hydro facilities, and the deadline to do so was December 31, 2013.[35] Therefore, the BC Hydro RECs will not be counted to meet LADWP's RPS Program procurement obligations.[36]

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[32] TN 213475, LADWP's Initial Response, p. 45.
[33] TN 213475, LADWP's Initial Response, pp. 45-46; see also TN 213758, LADWP's Reply Response, p. 3.
[34] TN 215479, LADWP's Comments to Committee's Proposed Decision, pp. 3-5; see also TN 213475, LADWP's Initial Response, pp. 40-42, 64-65, 101-102; TN 213758, LADWP's Reply Response, pp. 9-16, 25-28.
[35] TN 213251, RPS Eligibility Guidebook, Seventh Edition, pp. 78-79.
[36] We question, but need not decide, whether the out-of-country BC Hydro facilities could be shown to satisfy the requirement of Public Resources Code section 25741 that "it is developed and operated in a manner that is as protective of the environment as a similar facility in the state." (Pub. Resources Code, § 25741(a)(3).)

Retroactive Application of Laws

In its initial pleadings, LADWP argued that Commission Staff's interpretation of "rules in place" as the CEC's RPS Eligibility Guidebook is a retroactive application of SBX1-2 to LADWP's BC Hydro and Biomethane Agreements.[37] The Committee Proposed Decision issued on January 5, 2017 did not address this issue.[38] We now address LADWP's retroactivity arguments, as modified in its oral and written comments directed specifically at the Proposed Decision.[39]

As discussed in Parts 1 and 2 of this decision, 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 SBX1-2 and AB 2196. And, based on the totality of the legislative language – including the numerous 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.

LADWP's retroactivity argument has superficial appeal. Applying the Article 16 requirement that procurement must be from an "eligible renewable energy resource" in order to count for Compliance Period 1 will mean that some pre-SBX1-2 contracts will not count towards Compliance Period 1. But the case law regarding retroactive application of law and impairment of contracts shows that this result is not a prohibited retroactive application of law, nor does it impair LADWP's Powerex BC Hydro PPAs.

California law regarding prospective and retroactive application of laws is clear: "[i]f preexisting rights or obligations are substantially affected, then application of a statute to preenactment conduct is retroactive and forbidden, absent an express legislative intent to permit such retroactive application." (See, e.g. *USS-POSCO Industries v. Case* (2016) 244 Cal.App.4th 197, 217 (*USS-POSCO*)*; Evangelatos v. Superior Court (1988*) 44 Cal.3d 1188, 1207-1208.) However,"[i]f preexisting rights are not so affected, then application of a statute to preenactment conduct is prospective and therefore permitted." (*USS-POSCO, supra*, at p. 217.) In deciding whether the application of a law is prospective or retroactive, courts look to function, not form: "Does the law 'change [ ] the legal consequences of past conduct by imposing new or different liabilities based upon such conduct[?]' [Citation.] Does it 'substantially affect [ ] existing rights and

[37] TN 213475, LADWP's Initial Response to Committee's Scoping Order; Supporting Memo of P & A, p. 47-48, 101; see also TN 213758, LADWP's Reply Response to Committee's Scoping Order Dated July 27, 2016, p. 2.
[38] TN 215170, Committee Proposed Decision.
[39] TN 215479, LADWP Comments to Committee's Proposed Decision, pp. 3-6; TN 215814, Transcript of January 25, 2017 Committee Conference.

obligations[?]'" (*Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 231; see also *Evangelatos v. Superior Court, supra,* 44 Cal.3d at p. 1206 [stating that "[a] retrospective law is one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute."].) There is a presumption that laws apply prospectively. (*Id.* at pp. 1207-1208.)

With respect to contracts, the United States and California Supreme Courts have long held that the retroactive application of a statute may be unconstitutional as an ex post facto law if it deprives a person of a vested property right without due process of law or if it impairs the obligation of a contract or a contractual relationship. (U.S. Const., art I, § 10 ["No State shall … pass any … law impairing the obligation of contracts."]; Cal. Const., art. I, § 9. [A … law impairing the obligation of contracts may not be passed."]; see also *Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234; *City of Torrance v. Workers' Comp. Appeals Bd.* (1982) 32 Cal.3d 371.)

Therefore, the questions presented are whether our "rules in place" interpretation

> (1) changes the legal consequences of LADWP having entered into the Powerex BC Hydro PPAs, or taking actions thereunder, by imposing new or different liabilities based upon such conduct, or
>
> (2) substantially affects LADWP's existing rights and obligations under the Powerex BC Hydro PPAs.

The answer to both questions is "no."

Neither SBX1-2 nor our "rules in place" interpretation imposes new or different liabilities on LADWP based on its pre-SBX1-2 conduct. LADWP's Board and the city of Los Angeles established the 2005 RPS Policy to comply with former Section 387. LADWP entered into the Powerex BC Hydro PPAs under the 2005 RPS Policy. [40] The 2005 Policy restates former Section 387's directive to consider the effect of the Policy on rates, reliability, financial resources, and the goal of environmental improvement.[41] Thus, LADWP made a deliberate and informed decision, with ratepayer interests in mind, to enter into the Powerex BC Hydro PPAs to achieve compliance with Section 387 and to provide electricity to its ratepayers. There is no evidence that our "rules in

[40] The Powerex BC Hydro PPAs terminated in December 2011. TN 212401, [Ting Decl., ¶¶ 21-22 [TN 212419, BC Hydro Agreement No-BP 05-020-A and TN 212420, BC Hydro Agreement No-BP 05-020-B, § 3.1 (Effective Date and Term) and § 1.1 (Definition of Commencement Date)]. See also, TN 212400, LADWP's Motion to Add and Consolidate Additional RPS Eligibility Claims In 16-RPS-02, pp.8-9. There are currently no BC Hydro-related agreements, or existing rights thereunder, that are or can be affected by our interpretation.

[41] TN 212401, Ting Decl., ¶9, Ex. 6 [TN 212407, Bates No. LA000013-LA000020, LADWP 2005 RPS Policy].

place" interpretation impaired LADWP's ability to comply with Section 387 or diminished the value of benefits accrued from its acquisition and use of the BC Hydro generation.

Nor is there evidence that SBX1-2 or our interpretation has affected LADWP's pre-SBX1-2 rights and obligations, or impaired the Powerex BC Hydro PPAs in any way. There is no evidence that SBX1-2 or our interpretation affected LADWP's contractual obligations or contractual rights. LADWP and Powerex were not prevented from performing under the terms of the contracts. Nor is there any fine or other liability imposed for having entered into the agreements.[42]

LADWP argues that "it could have renegotiated the contracts, if it believed that eligibility required a mandate to certify the resources."[43] But the fact that LADWP might have amended the BC Hydro contracts if it had known that doing so would allow it to receive benefits under a new law, does not support a conclusion that the new law impaired the pre-existing agreements.

Simply put, LADWP's Section 387 obligations ended on December 10, 2011, and SBX1-2 established new obligations requiring a POU to procure energy from resources certified by the Energy Commission as "eligible renewable energy resources" as well as to meet specific procurement targets unless it otherwise complies with alternate compliance measures. (§ 399.30(a).) SBX1-2 and its constituent statutes were prospective in operation and effect. It is true that SBX1-2 contains provisions referred to in the legislative history as "grandfathering" provisions, including Section 399.16(d).

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[42] LADWP's situation stands in stark contrast to those cases where courts have found impairment of contract such as *Allied Structural Steel Co.,* supra, 438 U.S. 234. In this case, a private company's employment contract included provisions for a pension plan. The plan met the then-current federal income tax code, was subject to no other legislative requirements, and could be changed by the company at any time. "The company thus had no reason to anticipate that its employees' pension rights could become vested except in accordance with the terms of the plan. It relied heavily, and reasonably, on this legitimate contractual expectation in calculating its annual contributions to the pension fund." (*Id.* at 245-246.) When the state of Minnesota enacted the Private Pension Benefits Protection Act, it changed a basic term of the pension contract that the company had long relied on. Said the court: "The result was that, although the company's past contributions were adequate when made, they were not adequate when computed under the 10-year statutory vesting requirement. The Act thus forced a current recalculation of the past 10 years' contributions based on the new, unanticipated 10-year vesting requirement. [¶] Not only did the state law thus retroactively modify the compensation that the company had agreed to pay its employees from 1963 to 1974, but also it did so by changing the company's obligations in an area where the element of reliance was vital-the funding of a pension plan." (*Id*. at p. 246.)

[43] TN 215814, Transcript of January 25, 2017 Committee Conference at p. 29, line 19, and pp. 30, line 23-31, line 3.

But – contrary to LADWP's claims – Section 399.16(d) does not allow it to claim procurement for its Article 16 obligations from a renewable resource that is not certified.

SBX1-2 specified (1) the total amount of certified renewable procurement by compliance period, expressed as a percentage, and (2) the amount of each category, or "bucket", of certified renewable procurement, also expressed as a percentage. The "grandfathering" provision in Section 399.16(d) provides an exception to the second requirement, not an exception to the certification requirement. Specifically, the effect of Section 399.16(d) is to provide retail sellers and POUs the opportunity to use past contracts *that satisfy the legal requisites of eligible renewable energy resources* to reduce the total amount of renewable procurement required, without regard to the category requirements. In other words, if the BC Hydro facilities were certified as eligible renewable energy resources, LADWP's total renewable procurement obligation – the amount to which the category requirements are applied – would be reduced by the amount of verified procurement. But because neither LADWP nor Powerex applied for certification of the BC Hydro facilities, Energy Commission staff could not determine that the facilities qualified as eligible renewable energy resources. Therefore, LADWP is not entitled to a reduction in the amount of renewable energy it is required to procure.

Because the facilities identified in the Powerex BC Hydro PPAs were not certified, they do not meet Section 399.16(d) criteria, and LADWP must look to other contracts and generation sources to meet its RPS Program procurement requirements. SBX1-2 provided LADWP and other POUs time to take actions necessary to comply with these new requirements and significantly, provided POU governing boards the option to adopt compliance measures to ensure compliance with the RPS Program if they could not meet compliance period procurement requirements. (§ 399.30(d)(2); Cal. Code Regs., tit. 20, § 3206 [essentially providing that if POUs adopt measures that meet specified criteria, then the POU could delay timely compliance, specify cost limitations for procurement expenditures, or reduce the portfolio balance requirement for Portfolio Content Category 1]). LADWP adopted compliance measures.[44]

As discussed above, our "rules in place" interpretation does not (1) change the legal consequences of LADWP having entered into the Powerex BC Hydro PPAs, or taking actions thereunder, by imposing new or different liabilities based upon such conduct, or (2) substantially affect LADWP's existing rights and obligations under the Powerex BC Hydro PPAs. As a result, our interpretation is not an impermissible retroactive application of law.[45]

[44] TN 212401, Ting Decl., ¶13, Ex. 10 [TN 212411, LADWP's Renewable Portfolio Standard Policy and Enforcement Program Amended December 2013, pp. 8-11].
[45] According to LADWP, but for our interpretation it would meet SBX1-2 procurement requirements and that solely because of our interpretation LADWP potentially faces criminal and civil penalties for noncompliance in violation of rules prohibiting ex post

Part 2: Procurement Under the Biomethane Agreements

As noted above, to determine whether the Biomethane Agreements support certification of LADWP's Scattergood, Harbor, Valley, and Haynes generating stations as eligible renewable energy resources, we must ascertain what rules apply to that determination. Both SBX1-2 and AB 2196 identify specific treatment of renewable resources and their generation that were eligible under the "rules in place" at the time of the contract was executed. Therefore, a threshold question that must be answered is whether the "rules in place" are the rules adopted by LADWP for its own renewable procurement program pursuant to now-repealed Section 387, or whether they are the rules contained in the RPS statutes applicable to retail sellers and implemented by the Energy Commission in its Guidebooks.

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facto laws. (See TN 213758, LADWP's Reply Response to Committee's Scoping Order, pp. 46; TN 215479, LADWP's Comments to Committee's Proposed Decision, p.10.) There is no evidence that LADWP could face criminal penalties under the RPS Program but even if there were, our "rules in place" interpretation is not prohibited under ex post facto law. Prohibited ex post facto laws are those that punish "as a crime an act previously committed, which was innocent when done, which makes more burdensome the punishments for a crime, after its commission, or which deprives one charged with crime of any defense available according to law at the time when the act was committed." (*In re Arafiles* (1992) 6 Cal.App.4th 1467, 1482-1483, following and quoting *Beazell v. Ohio* (1925) 269 U.S. 167, 169-170.) Should LADWP face a penalty for noncompliance with the RPS Program, it would be attributable to LADWP's noncompliance with Compliance Period 1 procurement requirements and failure to properly invoke optional compliance measures. It would not be attributable to LADWP having entered into the Powerex BC Hydro PPAs, receiving benefits under the PPAs, or discharging its duties under the PPAs.

LADWP alternately suggests that our interpretation would somehow deprive it of due process. (See TN 213758, LADWP's Reply Response to Committee's Scoping Order, pp. 45-47.) However, before any penalty could be imposed on LADWP, it would receive notice and an opportunity to be heard in an adjudicative proceeding before the Energy Commission. (Cal. Code Regs., tit. 20, § 1240 [specifying that Commission staff would serve a complaint on LADWP to initiate proceedings to determine compliance with the RPS Program, LADWP would then have a right to respond in writing to the complaint, the Commission must subsequently hold a hearing to determine whether to issue a notice of violation for possible penalties from the California Air Resources Board].)

LADWP makes two arguments in its Initial Response to the Committee's Scoping Order: first, that the applicable rules are LADWP's rules,[46] and second that if the Commission finds that the applicable rules are those contained in the Guidebooks, that the Third Edition Guidebook as written governs the determination.[47] Staff, in its Response to Committee Questions, states that the applicable rules are those contained in the Fourth Edition Guidebook, but that if the Commission decides that the Third Edition Guidebook governs, that specific delivery rules contained in the Fourth Edition guidebook should be applied to that determination under the Third Edition Guidebook.[48]

A. Fact Summary

In 2004, LADWP adopted, and the Los Angeles City Council approved, a renewables portfolio standard program as required by Section 387. This program was amended from time to time. The May 2008 amendment expanded the scope of eligible renewable resources 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".[49]

The Biomethane Agreements were among several other agreements entered into by LADWP to meet its Section 387 obligations.

The Shell Agreement. The Shell Agreement was between LADWP and Shell Energy North America (US), L.P. and executed on February 1, 2008. The Shell Agreement includes multiple documents, including the Base Contract executed on February 1, 2008

[46] TN 213475, LADWP's Initial Responses to the Committee's Scoping Order dated July 27, 2016; Supporting Memorandum of Points and Authorities, p. 37.
[47] TN 213475, LADWP's Initial Responses to the Committee's Scoping Order dated July 27, 2016; Supporting Memorandum of Points and Authorities, 38, 89-92.
[48] TN 213474, Response of California Energy Commission Staff to Questions in the Committee's Order of July 27, 2016, p. 9. We recognize that Commission staff recently stated that "[i]f the Committee determines that the biomethane procured by LADWP under the [Biomethane] Agreements satisfied the requirements under the Third Edition Guidebook, the Parties agree that the generation from the use of the biomethane procured under the [Biomethane] Agreements at LADWP's Scattergood, Harbor, Valley, and Haynes generating facilities should count in full for the RPS Program," but this does not relieve us of our duty to analyze this issue. TN 214740 [Joint Statement Regarding Points of Agreement], pp. 4-5.
[49] TN 212401, Decl. of Louis C. Ting in 16-RPS-02 (Ting Decl.), ¶11, Ex. 8 [TN 212409, City of Los Angeles Department of Water and Power Renewables Portfolio Standard Policy as Amended April 2008), §3 Eligible Resources, Bates No. LA000045.

and Transaction Confirmation executed on or about July 27, 2009. Amendments were executed in 2009.[50, 51]

The Agreement had a term of August 1, 2009 to June 30, 2014[52] and was for LADWP's purchase of "renewable biomethane" as metered and delivered from designated out-of-state landfills on a monthly basis.[53]

The Agreement defined "Renewable Biomethane" ("RB") as gas produced from the landfill sources set forth in the Agreement "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)." This Guidebook defined Landfill Gas as "gas produced by the breakdown of organic matter in a landfill (composed primarily of methane and carbon dioxide) or the technology that uses this gas to produce power."[54] The Agreement further acknowledged that RB, as defined therein, is a qualifying resource under Buyer's [LADWP] Renewable Portfolio Standard ('RPS') program in effect as of the execution date of this Transaction Confirmation ...."[55]

The delivery point for the receipt of the renewable biogas was the natural gas terminal located at Opal, Wyoming.[56] The manner of delivery was described as follows:[57]

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[50] TN 213035, Supplemental Dec. of Louis C. Ting in 16-RPS-02, ¶3, Ex. 27 [TN 213036, Base Contract for Sale and Purchase of Natural Gas, Transaction Confirmation, First Amendment to the Transaction Confirmation, Second Amendment to the Transaction Confirmation, Bates No. LA000508-000535].

[51] We chose the date of the Base Contract for purposes of identifying an original agreement date, but note that the Third Edition Guidebook was in force in 2008 and in 2009 when the amendments were executed.

[52] TN 213035, Supp. Ting Decl., ¶3, Ex 27 [TN 213036, Transaction Confirmation, Bates No. LA000520]

[53] TN 213035, Supp. Supp. Ting Decl., ¶3, Ex 27 [TN 213036, Transaction Confirmation, Bates No. LA000520-000523; First Amendment to Transaction Confirmation, Bates No. LA000524-000533; Second Amendment to Transaction Confirmation, Bates No. LA000534-000535].

[54] TN 213035, Supp. Ting Decl., ¶3, Ex 27 [TN 213036, Transaction Confirmation, Bates No. LA000520-000521] [referencing Second Edition Renewable Energy Program Overall Guidebook, http://www.energy.ca.gov/2007publications/CEC-300-2007-003/CEC-300-2007-003-ED2-CMF.PDF, p.17].

[55] TN 213035, Supp. Ting Decl., ¶3, Ex 27 [TN 213036, Transaction Confirmation, Bates No. LA000520-000521].

[56] TN 213035, Supp. Ting Decl., ¶3, Ex 27 [TN 213036, Transaction Confirmation, Bates No. LA000520].

[57] TN 213035, Supp. Ting Decl., ¶3, Ex 27 [TN 213036, Transaction Conformation, Bates No. LA000521]

> Seller will provide an attestation identifying the specific landfill source, 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.

The Atmos Agreement. The Atmos Agreement[58] was between LADWP and Atmos Energy Marketing and executed on July 30, 2009.[59] The Atmos Agreement had a term of September 1, 2009 through July 31, 2014.[60]

The Agreement was for LADWP's purchase of renewable biogas, specifically pipeline quality landfill gas from designated landfill facilities.[61] The agreement defines Landfill Gas to have the meaning as defined in the Energy Commission's Renewable Energy Program Overall Guidebook (January 2008). This Guidebook defined Landfill Gas as "gas produced by the breakdown of organic matter in a landfill (composed primarily of methane and carbon dioxide) or the technology that uses this gas to produce power."[62] The Agreement acknowledged that "Landfill Gas, as defined herein, is a qualifying

[58] The Atmos Agreement included two documents: 1) the Base Contract executed on July 30, 2009 and 2) the Transaction Confirmation dated August 21, 2009 TN 213035, Supp. Ting Decl., ¶4, Ex 28 [TN 213037, Base Contract and Transaction Confirmation, Bates No. LA000536-000557].

[59] We chose the date of the Base Contract for purposes of identifying an original agreement date but note that the Third Edition Guidebook was in when the amendments were executed.

[60] TN 213035, Supp. Ting Decl., ¶4, Ex 28 [TN 213037, Award and Confirmation Letter, Bates No. LA000550; Transaction Confirmation, Bates No. LA 000551].

[61] TN 213035, Supp. Ting Decl., ¶4, Ex 28 [TN 213037, Transaction Confirmation, Bates No. LA000536-000549, 000551,00054, 000557.

[62] TN 213035, Suppl. Ting Decl., ¶ 4, Ex. 28, Attestation, LA000552 [referencing Second Edition Renewable Energy Program Overall Guidebook, http://www.energy.ca.gov/2007publications/CEC-300-2007-003/CEC-300-2007-003-ED2-CMF.PDF, p.17].

resource under Buyer's [LADWP] Renewable Portfolio Standard ('RPS') program in effect as of the execution date of this Transaction Confirmation…".[63]

The delivery point for the receipt of the renewable biogas was the natural gas terminal located at Opal, Wyoming.[64] The manner of delivery was described as follows:

> Seller will provide an attestation identifying the specific landfill source, stating the supply source is Landfill Gas and that the Landfill Gas 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 through direct long-haul transportation. Specifically, that environmental attributes will be unbundled from the gas 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 quantity 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.[65]

The gas procured under the Biomethane Agreements was injected into the interstate pipeline system at specific landfills where the gas was sourced, and measured by its energy content in British Thermal Units (Btus) at the time of injection. An equal volume of gas, as measured in Btus, was then delivered to LADWP through a gas exchange at Opal, Wyoming.[66] At Opal, the gas was injected into KRT's interstate natural gas pipeline system, which is located within the WECC region.[67]

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[63] TN 213035, Supp. Ting Decl., ¶4, Ex 28 [TN 213037, Transaction Confirmation, Bates No. LA000556].
[64] TN 213035, Supp. Ting Decl., ¶3, Ex 28 [TN 213037, Transaction Confirmation, Bates No. LA000551].
[65] TN 213035, Supp. Ting Decl., ¶3, Ex 27 [TN 213037, Transaction Confirmation, Bates No. LA000556].
[66] TN 213035, Supp. Ting Decl., ¶3, Ex 27 [TN 213037, Transaction Confirmation, Bates No. LA 000551].
[67] TN 213079, Decl. of Scott Masuda in 16-RPS-02, ¶¶ 4-224, Exs 68-286 [TN 213080-213245, 213252-213283, 213300-21226, Misc. SoCalGas, Shell, Atmos, invoices, attestations, landfill meter data, Bates No. LA000779-001495].

KRT Firm Transportation Delivery Service for the Biogas Under the Biomethane Agreements

LADWP's KRT Firm Transportation Agreement Nos. 1006 and 1706 provided firm transportation delivery service for the renewable biogas received at Opal, Wyoming under the Biomethane Agreements and delivered to SoCal Gas' delivery points at Kramer Junction and Wheeler Ridge in Southern California during the entire term of both agreements.[68] Southern California Gas' (SoCal Gas) Master Services Agreement No. 47498-6 governed the transportation and delivery of gas received at Kramer Junction and Wheeler Ridge during the term of the Biomethane Agreements.[69]

SoCal Gas Monthly Invoices for the period of January 2011 to December 2013 specify delivery of gas on SoCal Gas' interstate transportation system to LADWP's in-basin generating facilities, including the Scattergood Generating Station, Haynes Generating Station, Valley Generating Station, and Harbor Generating Station from January 1, 2011 to December 31, 2013.[70] LADWP confirmed the use of the Shell and Atmos biomethane at LADWP's Scattergood, Valley, and Haynes Generating Stations.[71]

Certification Applications

This decision relates to the certification applications received by the Energy Commission on July 19, 2013, relating to the Biomethane Agreements.[72] The record reflects prior certification applications regarding these Agreements, but those applications were superseded by the 2013 applications.

B. Analysis

As noted above, resolution of the biomethane issues turns on the meaning of the phrase "rules in place" as used in Section 399.12.16, which was in force when LADWP submitted its 2013 applications.[73] Section 399.12.6 provided in pertinent part:

[68] TN 213035, Supp. Ting Decl., ¶¶ 17-22, Exs 38, 41-46 [TN 213047– 213055, Kern River agreement docs], Transaction Confirmation, Bates No. LA000593-000621].
[69] TN 213035, Supp. Ting Decl., ¶¶ 23-39, Exs 57-72 [TN 213056].
[70] TN 213079, Masuda Decl., ¶¶ 189-224, Exs. 251-286 [TN 213283, 213300-213319, 213321-21336, Misc. SoCalGas invoices, Bates Nos. LA001351-0014950].
[71] TN 213415, Second Supp. Ting Decl., ¶4-7, Exs. 348-350, 355 [TN 213666, 213662-213663, Bates Nos. LA001717-001721 and TN 213665, Bates No. LA001734].
[72] TN 213405, LADWP July 19, 2013 Applications for Certification.
[73] Section 399.16, as added by SBX1-2, also contained provisions providing specific treatment of renewable resources and their generation that were eligible under the "rules in place" at the time of the contract was executed. However, because Section 399.12.6 is a later-enacted statute, and is specific to biomethane, we turn to it to guide

> (a)(1) [1] Any procurement of biomethane delivered through a common carrier pipeline under a contract executed by a retail seller or local publicly owned electric utility and reported to the Energy Commission prior to March 29, 2012, [2] and otherwise eligible under the rules in place as of the date of contract execution [3] shall count toward the procurement requirements established in this article, under the rules in place at the time the contract was executed, including the Fourth Edition of the Energy Commission's Renewables Portfolio Standard Eligibility Guidebook, provided that those rules shall apply only to sources that are producing biomethane and injecting it into a common carrier pipeline on or before April 1, 2014. (annotation added.)

This provision can be deconstructed into elements as annotated above, each of which must be satisfied for LADWP's biomethane procurement to count in full. In order to apply the facts to each element, we must first make two important determinations: 1) whether the "rules in place" as referenced in Section 399.12.6 are the rules adopted by a POU for its own renewable procurement program pursuant to now-repealed Section 387, or whether they are the rules contained in the RPS Program statutes and implemented by the Energy Commission in its Guidebooks; and 2) whether the Biomethane Agreements were subject to the delivery requirements of the Energy Commission's Third or Fourth Edition Guidebook, even though there is no dispute that the Third Edition was in effect when the Agreements were executed.

"Rules in Place"

Neither RPS Program statutes nor its legislative history speak directly to the meaning of the phrase "rules in place." Even so, LADWP argues that the phrase refers solely to a POU's adopted eligibility rules, and Commission staff contends it applies only to the applicable Energy Commission Guidebook. As discussed more fully in Part 1 above, we conclude that the most reasonable interpretation is that a generating facility must meet the statutory definition of an eligible renewable energy resource in place at the time of contract execution, and must meet the requirements of the Energy Commission Guidebook in place at the time of contract execution. This conclusion is further supported by the language included in Section 399.12.6, added by AB 2196, which explicitly includes the Energy Commission Guidebook among the "rules in place."[74]

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our determination of the eligibility of the Biomethane Agreements, while noting that our analysis of the SBX1-2 provisions in the section of this Decision addressing BC Hydro is entirely consistent with our determination here.

[74] The Fourth Edition Guidebook would only be applicable when it was the version in place at the time the contract at issue was executed.

Accordingly, in this matter, we apply the RPS Program statutes in force when the Biomethane Agreements were executed and the Third Edition Guidebook.

When the Biomethane Agreements were executed, an "eligible renewable energy resource" was defined to mean an electric generating facility that meets the definition of 'in-state renewable electricity generation facility' in Section 25741 of the Public Resources Code. An 'in-state renewable electricity generation facility' meant an electric generating facility that "uses" fuel types including landfill gas (and, satisfies other requirements that are not in dispute in this matter). (§ 399.12(c), Pub. Resources Code, § 25741(b)(1) and (b)(2)(A).)

Significantly, the Third Edition Guidebook made no mention of pipeline biomethane. Instead, it focused *generally* on "RPS-eligible biogas," biogas derived from RPS-eligible fuel such as biomass or digester gas, injected into a natural gas transportation pipeline system and delivered to California for use in an RPS-certified facility.[75] Biomass fuels included any organic material not derived from fossil fuels, including landfill gas.[76] The Third Edition imposed heat content and quality requirements for pipeline biogas, and as to delivery required only that "the gas must be injected into a natural gas pipeline system that is either within the WECC region or interconnected to a natural gas pipeline system in the WECC region that delivers gas into California."[77]

With the adoption of the Fourth Edition Guidebook, the Energy Commission – for the first time – imposed requirements *directed at* pipeline biomethane and included specific contracting requirements. It stated in pertinent part:

> 2. The biomethane must be injected into a natural gas pipeline system that is either within the WECC region or interconnected to a natural gas pipeline system located in the WECC region that delivers gas into California (or delivers to the electric generation facility if the electric generation facility is located outside California) and the gas is delivered as specified below.
>
> 3. The applicant, or authorized party, must enter into contracts for the delivery (firm or interruptible) or storage of the gas with every pipeline or storage facility operator transporting or storing the gas from the injection point to California (or to

[75] TN 213249, RPS Eligibility Guidebook Third Edition, p. 20.
[76] TN 213249, RPS Eligibility Guidebook Third Edition, p. 11; Second Edition Renewable Energy Program Overall Guidebook, http://www.energy.ca.gov/2007publications/CEC-300-2007-003/CEC-300-2007-003-ED2-CMF.PDF, pp. 16 [defining Biomass], 20 [defining Landfill gas (LFG)], http://www.energy.ca.gov/2007publications/CEC-300-2007-003/CEC-300-2007-003-ED2-CMF.PDF.
[77] TN 213249, RPS Eligibility Guidebook Third Edition, p. 21.

the electric generation facility if the electric generation facility is located outside of California). Delivery contracts with the pipeline operators may be for delivery with or against the physical flow of the gas in the pipeline.[78]

As we understand it, Commission staff denied LADWP's certification applications based on the belief that the Scattergood, Harbor, Valley, and Haynes generating stations failed to satisfy the "use" requirements of Public Resources Code section 25741 because delivery under the Biomethane Agreements did not satisfy the contracting requirements of the Fourth Edition Guidebook.[79] Staff determined that the Fourth Edition pipeline biomethane delivery provisions merely "clarified" the pipeline delivery provisions of the Third Edition Guidebook, since staff had previously interpreted the Third Edition Guidebook to require "firm or interruptible transportation" and a physical contract path from point of injection through point of delivery. This interpretation excluded delivery by exchange which was the delivery method specified in the Biomethane Agreements.[80]

We disagree with Commission staff's determination as the facts clearly show that the Third Edition Guidebook was in force when the Biomethane Agreements were executed and it did not preclude delivery by exchange as specified by the Agreements. We therefore find that because the Fourth Edition Guidebook became effective *after* the Agreements, its specific contracting requirements do not apply to the certification applications. Instead, the applications were subject to the general biogas delivery requirements specified in the Third Edition Guidebook that did not exclude exchange as a method of delivery.

Application of Facts to the Elements of Section 399.12.6

Under the first element, LADWP's procurement must have been delivered through a common carrier pipeline under a contract executed by a retail seller or POU and reported to the Energy Commission prior to March 29, 2012.

The parties agree that: the biomethane procured under the Biomethane Agreements was generated from landfills that were producing the gas and injecting it into a common

[78] TN 213250, RPS Eligibility Guidebook Fourth Edition, p. 20.
[79] TN 213427, Energy Commission Staff Response to Petition for Reconsideration, LA002395, LA002399-002411, LA 002422-LA002424, LA002428-002429; TN 213474, Staff Response to Committee Questions, pp. 10-14; Supp. Decl. Christina Crume, ¶¶ 11-17.
[80] TN 213427, Energy Commission Staff Response to Petition for Reconsideration, LA002395, LA002399-002411, LA 002422-LA002424, LA002428-002429; TN 213474, Staff Response to Committee Questions, pp. 9, 14-15; TN 213981, Supp. Decl. Christina Crume, ¶¶ 11-17.

carrier pipeline;[81] the Agreements were executed prior to March 29, 2012, and LADWP reported the source and amount of biomethane procured under the Biomethane Agreements to the Energy Commission before March 29, 2012, by submitting the applications for certification.[82] Thus, the first element is met.

The second element required LADWP's procurement under the Biomethane Agreements to have been otherwise eligible under the "rules in place" as of the date the Agreements were executed -- February 1, 2008 and July 27, 2009 (Shell Base Contract and amendments) and July 30, 2009 (Atmos Base Contract).[83]

As discussed above, we conclude that the most reasonable interpretation of the phrase "rules in place" is that a generating facility must meet the statutory definition of an eligible renewable energy resource in place at the time of contract execution and, must meet the requirements of the Energy Commission Guidebook in place at the time of contract execution. Accordingly, in this matter, we apply the RPS Program statutes in force when the Biomethane Agreements were executed and, the Third Edition Guidebook.

When the Agreements were executed, an eligible renewable energy resource meant an electric generating facility that "uses" fuel types including landfill gas (and, satisfies other requirements that are not in dispute in this matter). (§ 399.12(c), Pub. Resources Code, § 25741(b)(1) and (b)(2)(A).) The subject generating facilities met this requirement by complying with the Third Edition Guidebook's prerequisite that the landfill gas be injected into a natural gas pipeline system that was interconnected to a natural gas pipeline system in the WECC region that delivered gas into California.[84] As a result, the second element is satisfied.

The third element provided that the procurement "shall count toward the procurement requirements established in [Article 16 of the Public Utilities Code], under the rules in place at the time the contract was executed, including the Fourth Edition of the Energy

[81] TN 214740, Joint Statement Regarding Points of Agreement, p.3.
[82] TN 214740, Joint Statement Regarding Points of Agreement, p.4.
[83] The Third Edition Guidebook was in effect when both of these contracts were executed. However, there were different versions of 399.12 and Public Resources Code section 25741 in effect. However, the differences in versions have no impact on this analysis.
[84] TN 213079, Decl. of Scott Masuda, ¶¶ 4-224, Exs 68-286 [TN 213080 – 213245, 213252-213283, 213300-21226, Misc. SoCalGas, Shell, Atmos, invoices, attestations, landfill meter data, Bates No. LA000779-001495].; see also TN 213411, Expert Declaration of Benjamin Schlesinger Ph.D in 16-RPS-02, ¶12; TN 213035, Supp. Ting Decl., ¶17, 22 Exs. 41, 46 [TN 213050 and 213055 Kern River agreement docs]; TN 214740, Joint Statement Regarding Points of Agreement, p. 4.

Commission's Renewables Portfolio Standard Eligibility Guidebook, provided that those rules shall apply only to sources that are producing biomethane and injecting it into a common carrier pipeline on or before April 1, 2014."

The parties do not dispute that the biomethane procured under the Biomethane Agreements was generated from landfills that were producing the gas and injecting it into a common carrier pipeline on or before April 1, 2014. Thus, the only question is what the Public Utilities Code Article 16 procurement requirements were when the Biomethane Agreements were executed.

As discussed above, we have determined that when the Biomethane Agreements were executed, the rules in place regarding procurement were the RPS Program statutes and the Third Edition Guidebook. The statutes required the CPUC to 1) establish a "renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of output from eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year," subject to exceptions and 2) implement annual procurement targets so that 20 percent of an electrical corporation's retail sales were procured from eligible renewable energy resources no later than December 31, 2017. (§ 399.15 (a), (b), underline added.)

With regard to the Third Edition Guidebook, there do not appear to be any – nor have the parties raised or briefed – additional procurement requirements that would apply to LADWP aside from the pipeline biogas delivery requirements discussed above. As discussed above, the Biomethane Agreements and generating facilities satisfied the Third Edition delivery and eligibility requirements.

Individually and taken together, these rules in place allow LADWP to count in full the procurement from the Biomethane Agreements used by the subject generating facilities. Staff and LADWP concur. In their Joint Statement Regarding Points of Agreement, they state: "[i]f the Committee determines that the biomethane procured by LADWP under the [Biomethane] Agreements satisfied the requirements under the Third Edition Guidebook, the Parties agree that the generation from the use of the biomethane procured under the [Biomethane] Agreements at LADWP's Scattergood, Harbor, Valley, and Haynes generating facilities should count in full for the RPS Program."[85]

For these reasons, the third element is satisfied.

Conclusion.

Applying the Third Edition Guidebook and the version of Public Resources Code section 25741 in effect at the time of Agreement execution, we find that the Scattergood,

[85] TN 214740, Joint Statement Regarding Points of Agreement, pp. 4-5.

Harbor, Valley, and Haynes generating facilities are eligible renewable energy resources and the electrical generation under the Biomethane Agreements can count toward LADWP's RPS Program procurement requirements. The decision does not address the amount of generation that will count in full. That determination is beyond the scope of this decision and requires Energy Commission staff to evaluate this generation in its statutorily required verification process to determine the amount of generation that will count in full.

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 or~~ claims that that the Fourth Edition's delivery requirement is in conflict with Federal Energy Regulatory Commission tariffs and other rules and industry practices relating to the operation of the gas pipeline transmission system. And, we do not address whether the generating facilities satisfied the requirements of the Fourth Edition Guidebook.

This Decision addresses LADWP's appeal of the Energy Commission's Executive Director's denial of LADWP's certification application for the Biomethane Agreements and request that RECs from BC Hydro be credited toward LAWDP's RPS Program procurement obligations. In reaching this Decision, we have interpreted various provisions of law, including the RPS Program statutes and the Energy Commission's RPS Eligibility Guidebooks. LADWP has advanced various equitable arguments, but equitable considerations are outside the reach of this Decision focused on statutory construction. While Public Resources Code section 25218(e) gives the Energy Commission broad authority to take any action "it deems reasonable and necessary to carry out this division," the phrase "this division" refers to Division 15 of the Public Resources Code. Because this Decision deals primarily with interpretation of Public Utilities Code provisions, we decline to use our broad authority under Section 25218(e).

However, this does not preclude the Commission from hearing and considering equitable arguments if LADWP ever becomes subject to a Commission staff complaint for alleged violations of the RPS Program. The Commission's regulations governing RPS enforcement allow a POU to include in its answer "any other information deemed relevant [ ] to any claims, allegations, or defenses made in the answer. The answer may also include information deemed relevant [ ] to support findings of fact regarding any mitigating or otherwise pertinent factors related to any alleged violation or to a possible monetary penalty that may be imposed if noncompliance is determined pursuant to this section." (Cal. Code Regs., tit. 20, § 1240(d)(1).)

Official Notice

Pursuant to California Code of Regulations, title 20, section 1212(b)(1)(C), we take official notice of the following documents:

- AB 2196 Legislative Counsel's Digest, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB2196
- SBX1-2 Legislative Counsel's Digest, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120121SB2
- California Energy Commission Renewable Energy Program Overall Program Guidebook (January 2008), http://www.energy.ca.gov/2007publications/CEC-300-2007-003/CEC-300-2007-003-ED2-CMF.PDF,

Findings of Fact

1. LADWP entered into two agreements, one with Shell in 2008 (which was amended in 2009) and one with Atmos in 2009, to procure biomethane from out-of-state facilities for use in LADWP's Scattergood, Harbor, Valley, and Haynes generating stations (LADWP facilities); together these are referred to in this Decision as the Biomethane Agreements.
2. The Biomethane Agreements provided that delivery of the biomethane would be through a transaction called an exchange, under which the gas and the environmental attributes of the biomethane were unbundled near the source of the gas and re-bundled at the delivery point in Opal Wyoming, where the gas was injected into KRT's gas transmission line for ultimate delivery to LADWP;
3. In 2013, LADWP applied for certification of its LADWP facilities based on the biomethane agreements, and Energy Commission staff rejected the applications on February 28, 2014;
4. LADWP filed a request for reconsideration on March 28, 2014, which Energy Commission staff denied on December 22, 2015, which was followed by LADWP's timely appeal to the full Energy Commission on January 21, 2016;
5. In 2007, LADWP entered into two contracts with Powerex for the procurement of hydroelectric energy from any of 23 facilities located in any of two states and two Canadian provinces (BC Hydro); and
6. LADWP submitted claims for generation procured under the BC Hydro contracts, but never applied for certification of the BC Hydro facilities as eligible renewable energy resources.

Conclusions of Law

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, local publicly-owned electric 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 meets its statutory renewable procurement obligations, the Los Angeles City Council approved LADWP's 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";

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;

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;

6. SBX1-2, which significantly modified the RPS, was enacted in 2011; 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;

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 allows procurement under contract entered into on or before June 1, 2010 to count in full 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 energy resources does not support 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 "grandfathering" provision in Section 399.16(d) allows POUs to use past contracts that satisfy the legal requisites of eligible renewable energy resources to reduce the total amount of renewable procurement required without regard to the category requirements, but does not entitle LADWP to meet its Article 16 obligations with a renewable resource that is not certified;

~~15.~~14. 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;

15. Our interpretation of rules in place did not impose new or different liabilities on LADWP as a result of it entering into the Powerex BC Hydro PPAs to meet its PUC 387 obligations, affect LADWP's rights under the BC Hydro contracts, nor did it impair LADWP's ability to comply with Section 387;

~~13.~~16. The rules in place for biomethane are the RPS Program statutes and the Energy Commission's RPS Eligibility Guidebook, Third Edition; and

~~14.~~17. 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.

Order on LADWP's Appeal

Therefore, the Commission **ORDERS** the following with respect to LADWP:

1. LADWP's Scattergood, Harbor, Valley, and Haynes generating stations are eligible renewable energy resources and their electricity generation under the Biomethane Agreements, upon verification by staff, will count in full toward LADWP's RPS Program procurement obligations.

2. The RECs from the generation from the BC Hydro generation cannot be counted toward LADWP's RPS Program procurement obligations.

Dated: February 24, 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