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BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:)
Renewable Portfolio Standard)

Docket No. 11-RPS-01 and
Docket No. 02-REN-1038

**COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER
TO THE CALIFORNIA ENERGY COMMISSION'S STAFF WORKSHOP ON THE
PROPOSED CHANGES TO THE RENEWABLES PORTFOLIO STANDARD
ELIGIBILITY GUIDEBOOK AND THE OVERALL PROGRAM GUIDEBOOK FOR THE
RENEWABLE ENERGY PROGRAM**

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Pursuant to the procedures established by the California Energy Commission (Energy Commission, or CEC) by written notice issued on October 4, 2011, the Los Angeles Department of Water and Power (LADWP) respectfully submits these Comments on the Energy Commission's proposed changes to the Renewables Portfolio Standard Eligibility Guidebook (Eligibility Guidebook) and the Overall Program Guidebook for the Renewable Energy Program (Overall Guidebook).

I. INTRODUCTION AND OPENING COMMENTS

The City of Los Angeles is a municipal corporation and charter city organized under the provisions of the California Constitution. LADWP is a proprietary department of the City of Los Angeles that supplies both water and power to Los Angeles's inhabitants pursuant to the Los Angeles City Charter. LADWP is a vertically integrated utility that owns generation, transmission and distribution facilities. LADWP provides safe and reliable retail electrical energy to its approximately 1.4 million customers.

As LADWP looks into the future, most of the issues influencing strategic and resource planning are based on the critical issues that LADWP is facing in the areas of greenhouse gas (GHG) reduction, elimination of once-through cooling of its coastal power plants, the Renewables Portfolio Standard (RPS) target mandated in California's Renewable Energy Resources Act (also known as and referred to as SB 2 (1X)), and the reliable integration of increasing amounts of renewable resources.

II. COMMENTS

California's most recent legislation for its RPS Program requires "each local publicly owned electric utility [to] adopt and implement a renewable energy resource procurement plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources."¹ SB 2 (1X) modified the State's Program to include new requirements applicable to Publicly Owned Electric Utilities (POUs). This RPS Program requires POU governing boards to adopt an enforcement program by January 1, 2012². Since LADWP is a local publicly owned electric utility, it is required to comply with SB 2 (1X).

The LADWP encourages the Energy Commission and California Public Utilities Commission (CPUC) to coordinate their efforts to develop their respective regulations for SB 2 (1X), which may impact the POUs enforcement programs.

1) Eligibility of Biomethane under the RPS Eligibility Guidebook

The LADWP is aware that biomethane was not an issue directly covered in this workshop. However, multiple entities in California, including the LADWP, are in

¹ PUC §399.30(a), All code section references are to the Public Utilities Code, unless otherwise specified.

² §399.30(e)

the process of expending substantial resources procuring biomethane as part of their renewable energy resource portfolio based on the existing eligibility of pipeline biomethane as a renewable energy resource. It is critical that the Energy Commission quickly affirms the continued eligibility of pipeline biomethane as a renewable energy resource that qualifies towards the California's RPS Program.

Biomethane continues to be one of the few renewable energy resources available that provide dispatch and baseload capability. It is a reliable and predictable renewable energy resource. Biomethane is also needed to support other RPS resources that have low capacity factor characteristics. By 2016, LADWP expects to displace 638 Gigawatt Hour (GWh) of electricity generation by non-renewable natural gas with biomethane.

In addition, by capturing biomethane for the use of electricity generation rather than flaring it, LADWP is clearly reducing the amount of GHG emitted. Furthermore, by injecting biomethane into existing natural gas pipeline systems, LADWP is effectively offsetting the urgent need for new electric transmission systems and saving available capacity for critical solar and wind projects waiting to interconnect. An additional benefit is the efficient use of the existing California gas pipeline network.

SB 2 (1X) has not changed the definition for digester gas and landfill gas (collectively, "biomethane") from the prior version of the Public Resources Code Section 25741.³ Yet, the Energy Commission appears to be prepared to modify the eligibility of pipeline biomethane under the new version of the Eligibility Guidebook.

³ Compare the current version of the Public Resources Code Section 25741 (a) with the prior version of 25741 (b)(1).

It's motivation is not clear, and it is unknown what the ultimate changes will be to Section II.B.2 of the Eligibility Guidebook. LADWP urges the Energy Commission to affirm the continued eligibility of biomethane, including its transmission, as a renewable energy resource.

The LADWP is aware of the argument that pipeline biomethane should be considered ineligible as a renewable energy resource because the gas cannot be specifically tracked from the point of injection into a pipeline to a specified generation facility. Thus, one cannot be assured that pipeline biomethane is actually consumed at a specified California generation facility.

There are many reasons to discount this supposed position. First of all, this argument is not against biomethane, but directed at the delivery of the gas. Using the electric industry as an example, on a micro-level, once electrons (an indistinguishable commodity) are sent into the stream of commerce, the electrons follow the laws of physics and will flow based on the path of least resistance. The industry has no way to direct or track those specific electrons to the load that has contracted to receive them. However, confident in the knowledge that the sum of all electrical energy generated instantaneously equals the sum of all electrical energy consumed, the industry uses schedules to account for the generation and the use of certain amount of electrons under a "zero sum" assumption.

Similarly in the gas industry, once a gas molecule is sent into the stream of commerce, the molecule is chemically indistinguishable from any other methane gas and follows the laws of physics and will flow based on the path of least resistance. The pipeline industry has no way to track or direct a specific gas molecule to the

customer who has contracted to receive it. However, the industry uses its gas tariffs (interstate and intra-state) to accurately track the title to gas and to account for the delivery of certain amounts of gas to the ultimate end-use customer.

At a policy level, Section 399.11 (b) explicitly lists the Legislature's goals for SB 2 (1X), one of which is "*Displacing fossil fuel consumption within the state.*" (emphasis added). Once injected into the existing pipeline system, biomethane effectively *displaces the consumption of fossil fuel* within the state, which independently meets the Legislative objective set forth in SB 2 (1X). Further, as the Energy Commission clearly knows, the RPS program was adopted and continues to be implemented to achieve several policy objectives: environmental improvement, fuel diversity and economic benefits to the state. Biomethane collected, transported, and eventually burned in gas-fired generating units meets all of these policy objectives. Furthermore, the pipeline transmission of biomethane using existing natural gas pipelines "ensures the most cost-effective and efficient investment" in biomethane.⁴

The governing authorities for LADWP have made historical procurement and strategic decisions within its Integrated Resource Plans to transition the utility in-line with the above policy objectives, and to meet all of the complex regulatory requirements associated therewith. Hundreds of millions of dollars of LADWP ratepayer funds and many years of effort have already been invested to implement these efforts. If the Energy Commission proposes a sweeping, retroactive regulatory

⁴ See Public Resources Code Section 25740.5 (C).

change in pipeline biomethane eligibility, the regulatory uncertainty and risk will create an unreasonable significant financial impact on LADWP's ratepayers.

Biomethane, including its transmission, currently fulfills the existing policy objectives and guidance under SB 2 (1X), including vigorously pursuing and "optimizing public investment... in the most cost-effective and efficient investments in renewable energy resources."⁵ Therefore, LADWP urges the Energy Commission to provide the regulatory stability that the utilities and the market requires and not modify the existing pipeline biomethane eligibility requirements, since it currently fulfills the existing objectives and guidance of the Legislature under SB 2 (1X).

2) Eligibility of Small Hydroelectric Resources

For this zero-GHG-emitting source of energy, it is imperative that the Energy Commission make no artificial interpretations of the plain text of the statute. Page 31 of the Overall Guidebook defines "Small Hydroelectric" as eligible if such "small hydroelectric *facility of 40 MW* or less that is operated as part of a water supply or conveyance system [and] the retail seller or local publicly owned electric utility procured the electricity from the facility as of December 31, 2005." (emphasis added). This statement is not accurate in one important aspect.

The plain text of Section 399.12 (e)(1)(A) states that "a small hydroelectric *generation unit with a nameplate capacity not exceeding 40 megawatts* that is operated as part of a water supply or conveyance system is an eligible renewable energy resource if the retail seller or local publicly owned electric utility procured the electricity from the facility as of December 31, 2005." (emphasis added). Besides

⁵ Public Resources Code Section 25740.5(a)

the plain interpretation of the text, there are no additional capacity restrictions on small hydroelectric resources. The generating unit nameplate capacity, not the facility's total capacity, is the qualification for RPS certification.

The LADWP respectfully requests that the Energy Commission revise both the Overall Guidebook and the Eligibility Guidebook in order to be consistent with the plain text of the statute relative to the eligibility of "*small hydroelectric generating units with a nameplate capacity of 40 megawatts or less*" with no additional and artificial restrictions. The Legislature carefully considered this change to the small hydroelectric eligibility policy and intended to provide a limited carve-out to certain small hydroelectric generation units. By disregarding the intentional use of the term "generation unit", the Energy Commission's interpretation of Section 399.12(e)(1)(A) is unnecessarily restrictive and counter to the intent of the statute. Such an interpretation would not allow the Energy Commission to certify LADWP's small hydroelectric units, rendering these existing RPS resources as ineligible under the RPS. This would unnecessarily deny LADWP's ratepayers the societal benefits clearly intended by the Legislature, and would have a direct financial impact on them via electricity rates in order to fund replacement of the newly stranded small hydroelectric assets with "eligible" renewable resources.

3) Treatment of Contracts Approved by POU Governing Boards – prior to Pre-June 1, 2010 Resources

Page 15 of the Eligibility Guidebook states the following: "A facility approved by the governing board of a POU before June 1, 2010, to meet the POU's procurement obligations pursuant to former Public Utilities Code Section 387, may

be certified as eligible for the RPS if the facility meets the eligibility requirements set forth in *this* guidebook” (emphasis added). This statement does not align with the provisions and Legislative intent set forth in SB 2 (1X).

Section 399.12 (e)(1)(C) states that “a facility approved by the governing board of a local publicly owned electric utility prior to June 1, 2010... shall be certified as an eligible renewable energy resource by the Energy Commission... if the facility is a ‘renewable electrical generation facility’ as defined in Section 25741 of the Public Resources Code.” The Energy Commission’s interpretation of this provision would retroactively apply certification requirements that are yet to be adopted upon renewable resources previously adopted by the governing boards of POUs prior to June 1, 2010. This is clearly counter to the intent of this provision of the statute.

This provision recognizes that under Section 387, the POU governing boards had full authority to adopt RPS policies, and in fact, were required to adopt and meet their own targets. Under this authority, POUs made significant strategic investments to achieve aggressive long-term RPS targets. The Legislature recognized the need for POUs to transition from an RPS program under the full authority of their governing boards, to one in which future RPS procurement must meet statewide RPS eligibility rules. This provision of the statute provides selective grandfathering of RPS resources adopted under the full legal authority granted to POU governing boards prior to SB 2 (1X), within the limitations of Public Resources Code Section 25741.

Had the Legislature intended for all existing POU RPS resources to be certified in accordance with the most current edition of the Eligibility Guidebook, it

would have stated such intent, or at minimum, would never have included the language in Section 399.12(e)(1)(C).

Version 5 of the Eligibility Guidebook makes significant modifications to align with the provisions set forth in SB 2 (1X). These changes might alter the eligibility of resources that have previously been adopted by POU governing boards prior to the enactment of SB 2 (1X). The Energy Commission's Eligibility Guidelines should clearly reflect the Legislative intent of SB 2 (1X) and preserve those resources adopted by POU governing boards as part of its RPS program prior to June 1, 2010.

4) Distributed Generation Considerations in the Eligibility Guidebook

The Eligibility Guidebook requires POUs to use the Western Renewable Energy Generation Information System (WREGIS) to track and report, on a monthly basis, the energy generated by RPS-eligible facilities for Renewable Energy Credit (REC) purposes. While it is a good way to track and verify compliance with the RPS, this requirement will be burdensome, costly, and time-consuming for Distributed Generators -- in particular, for small-scale solar photovoltaic projects, such as those in LADWP's Solar Incentive Program (SIP).

The SIP provides ratepayer-funded incentives for residential and commercial customers to install solar photovoltaic systems on their facilities. The SIP has been in existence for over 10 years, is in full compliance with SB 1 guidelines, and has successfully promoted the installation of over 4,400 solar photovoltaic systems (totaling over 40 Megawatt s (MW)).

Approximately 4,000 RPS-eligible projects installed under the SIP are less than 10 kilowatts (kW). These “micro-projects” have performance meters (not revenue-quality meters) that are installed by the customers and which may not be fully accessible by the verifier (LADWP). In addition, LADWP as well as other POUs, still read most residential meters and bills bi-monthly. To comply with WREGIS monthly tracking and reporting requirements, new revenue-quality (i.e., high accuracy) meters will have to be installed to allow LADWP to verify the generation in a sustainable manner, and additional special meter reading might be required. This will be extremely laborious, costly, and grossly inefficient relative to the energy generated by the small-scale solar systems. The estimated cost to meter, record and report monthly energy production for systems smaller than 10 kW would rise substantially.

Therefore, LADWP requests that the Energy Commission exempt small-scale solar photovoltaic projects from the use of WREGIS to track and report monthly generation for RECs. These requirements are counterproductive to the program goal to promote distributed generation, may put an economic damper on future solar photovoltaic development, and will add significant and unnecessary expense to the ratepayer-funded program. Instead, the Energy Commission should allow utilities to report for these projects with expected performance data, which is based on the characteristics of the photovoltaic system (e.g., size, location, orientation, tilt, tracking, shading, etc.). LADWP and other utilities with customer solar incentive programs have based incentive rebates on expected performance data for smaller

systems for many years, and have found that these estimates are very close to actual energy output.

5) Treatment of Test Energy under the RPS

LADWP is concerned with the Commission's treatment of "Test Energy" under the RPS. The Eligibility Guidebook states that "[t]he WREGIS system will only create RECs for generation associated with the earliest active certificate issuance cycle at the time the facility is approved in the WREGIS system. For new facilities with a recent commercial on-line date, this could include 'test energy.'" According to this statement, the energy produced by a project prior to the commencement of commercial operation would not count towards a retail seller's or POU's RPS procurement obligations. This statement can have several negative implications in the implementation of large-scale renewable energy projects.

As a POU with a history and desire of owning and operating its generation, this proposed provision is problematic for meeting future compliance. LADWP has self-developed one of the largest POU-owned wind farms in the nation, as well as landfill generation with 50 micro-turbines, and is breaking ground on two 10 MW solar farms. In different phases of development and permitting are additional wind projects in Tehachapi Mountains, a 200 MW solar farm in the Owens Valley, and geothermal plants in Imperial County and the Owens Valley. Because of budgetary and labor resources, most of these developments are expected to be phased-in with a long period of test energy. Not counting the "test energy" will have a financial impact to LADWP ratepayers.

LADWP requests that renewable electrical generation projects should be eligible once the projects begin to supply “test energy” to the grid, which can be years prior to the formal commencement of commercial operations. There needs to be a mechanism in WREGIS to account for this type of energy, as this supply meets the requirements of SB 2 (1X).

We cannot determine the Energy Commission’s motivation to disqualify the use of test energy towards RPS compliance. The use of test energy was not modified by the implementation of SB 2 (1X).

6) Grace Period Exceptions for POUs Applies Old Eligibility Rules

LADWP appreciates the Energy Commission’s consideration of the fact that POUs will be making a transition from a self-regulated RPS program into one in which POU renewable facilities will need to obtain certification going forward. Such consideration is particularly important since SB 2 (1X) will be enacted in December 2011, POU governing boards must adopt their Enforcement Programs by January 1, 2012, the CEC RPS regulations will be adopted by July 2012, and POUs have a compliance obligation that is retroactive to January 1, 2011.

Accordingly, the proposed grace period exception policy on Page 74 of the Eligibility Guidebook provides that POUs may count electricity going back to January 1, 2011, from facilities yet to be certified, if: (a) the Energy Commission receives an application for certification by July 1, 2012, (b) the application is subsequently approved for certification (c) the electricity generation occurred as of January 1, 2011, and (b) the facility met all eligibility requirements of the 4th Edition

Eligibility Guidebook (if the generation occurred before the adoption of the 5th Edition Guidebook).

SB 2 (1X) has updated the RPS eligibility rules for small hydroelectric facilities and facilities adopted by POU's prior to June 1, 2010; facilities which have been, and will continue to be part of a POU's RPS portfolio going forward. Given that the first compliance period under the new RPS program began in January 1, 2011, the retroactive certification grace period is a good policy. However, in order for POU's to count the energy retroactively to January 1, 2011, as provided for in the grace period policy, the facilities must meet the pre-SB 2 (1X) eligibility rules found in the 4th Edition Eligibility Guidebook as the 5th Edition Eligibility Guidebook is still under development. Requiring certification under the 4th Edition Eligibility Guidebook will result in disqualification of energy from newly-eligible, existing small hydroelectric facilities until the 5th Edition Eligibility Guidebook becomes effective, a full year after the beginning of the first compliance period.

Given that POU's are well into the first compliance period and are still operating under a cloud of uncertainty relative to the eligibility of existing renewable resources, LADWP requests that the Energy Commission adopt a mechanism to allow POU's applying for certification under this grace period to choose which edition of the Eligibility Guidebook the facility is being certified to. Particularly, small hydroelectric generation, by statute, count towards the RPS program, and this proposed modification would allow utilities (and the Energy Commission) to pre-determine the Eligibility Guidebook applicable during certification, in lieu of the grace period policy.

This grace period policy is necessary and should provide regulatory certainty to POUs that have already begun the process of applying for certification of existing RPS resources. By selecting which edition of the Eligibility Guidebook is applicable to each facility, the POU can reasonably anticipate the outcome of the application or the potential eligibility of each resource as it makes this important transition.

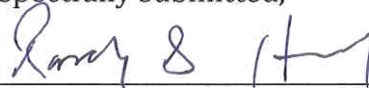
III. CONCLUSION

LADWP appreciates the opportunity to submit these comments and looks forward to cooperating with the Energy Commission in this proceeding.

Dated: November 2, 2011

Respectfully submitted,

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