BEFORE THE CALIFORNIA ENERGY COMMISSION
OF THE STATE OF CALIFORNIA

In the matter of:	)	
	)	
Developing Regulations and Guidelines	)	Docket No. 13-RPS-01
For the 33 Percent Renewables	)	
Portfolio Standard	)	

COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER (LADWP) TO THE CALIFORNIA ENERGY COMMISSION'S (Energy Commission, or CEC's) NOTICE OF PROPOSED ACTION FOR THE ADOPTION OF REGULATIONS ESTABLISHING ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD (RPS) FOR LOCAL PUBLICLY OWNED UTILITIES (POU's)

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Dated April 16, 2013

BEFORE THE CALIFORNIA ENERGY COMMISSION
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In the matter of:	)	
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Developing Regulations and Guidelines	)	Docket No. 13-RPS-01
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COMMENTS FROM THE LADWP TO THE CEC's NOTICE OF PROPOSED ACTION FOR THE ADOPTION OF REGULATIONS ESTABLISHING ENFORCEMENT PROCEDURES FOR THE RPS FOR LOCAL POU's

Pursuant to the procedures established by the CEC in the Notice of Proposed Action (NOPA) dated March 1, 2013, the LADWP respectfully submits these comments in response to the CEC's proposed Regulations establishing Enforcement Procedures (Regulations) for the RPS for Local POU's.

I. INTRODUCTION

The City of Los Angeles is a municipal corporation and charter city organized under the provisions set forth in the California Constitution. LADWP is a proprietary department of the City of Los Angeles, pursuant to the Los Angeles City Charter, whose governing structure includes the Mayor, the fifteen-member Los Angeles City Council (City Council), and a five-member Board of Water and Power Commissioners (Board). As the third largest electricity utility in the state, one of five California Balancing Authorities, and the nation's largest municipal utility, serving a population of over four million people, LADWP is a vertically integrated utility, both owning and operating the majority of its generation, transmission and distribution systems. LADWP has annual sales exceeding 23 million megawatt-hours (MWhs) and has a service territory that covers 465 square miles in Los Angeles and most of the Owens Valley. The

transmission system serving the territory totals more than 3,600 miles and transports power from the Pacific Northwest, Utah, Wyoming, Arizona, Nevada, and California to Los Angeles.

California's Renewable Energy Resource Act (SB 2 (1X)), most recent legislation for its RPS Program requires:

> "each local publicly owned electric utility [to] adopt and implement a renewable energy resources procurement plan that requires the utility procure a minimum quantity of electricity products from eligible renewable energy resources."[1]

Since LADWP is a POU, it is required to comply with SB 2 (1X).

II. LADWP REMAINS COMMITTED TO ITS REGULATORY OBLIGATIONS

As a result of combined regulatory mandates for increased renewable energy, emissions performance standard on fossil fuel generation, energy efficiency, solar roofs, reduction in greenhouse gas (GHG) emissions, and the elimination of once-through cooling from coastal power plants, LADWP is facing a utility-wide transformation and making billions of dollars in investments on behalf of its ratepayers to replace about 70 percent of its resources over the next 15 years that it has relied on for the last 50 years.

Prior to the enactment of SB 2 (1X), the City of Los Angeles was committed to the procurement of renewable energy as part of its long-term resource mix. On May 23, 2005, the Board adopted the LADWP RPS Policy that established the goal of increasing its renewable energy resources to 20 percent of its energy sales to retail customers by 2017, with an interim goal of 13 percent by 2010. On April 11, 2007, the Board amended the LADWP RPS Policy by accelerating the goal of requiring 20 percent of energy sales to retail customers to be generated from renewable resources by

[1] Public Utilities Code, Section 399.30(a)

December 31, 2010. In 2010, LADWP achieved its RPS goal of 20 percent renewable energy.

Per SB 2 (1X), LADWP has subsequently amended its RPS Policy to incorporate an Enforcement component and has proactively acquired renewable energy resources, such as wind, geothermal, biogas, and solar facilities that meet the RPS Guidebooks established by the State of California. LADWP continues to implement renewable resources and is on track to meet the 33 percent renewable energy target by 2020.

III. COMMENTS

The LADWP would like to take this opportunity to thank the CEC staff and Commissioners for their work on the proposed Regulations and the modifications made for the compliance periods, the revised interpretation of "reasonable progress," and the addition of unanticipated curtailments as a permitted rule in the delay of timely compliance section. These adjustments further align the proposed Regulations with the legislative intent of SB 2 (1X).

LADWP's comments propose modifications to the Regulations that emphasize the need to recognize POU historical investments in renewable technologies prior to the enactment of SB 2 (1X). LADWP also wants to ensure that the CEC's Regulations do not abrogate the authority of LADWP's governing board or the Los Angeles City Council.

LADWP's comment (or lack of comment) on a specific topic should not be interpreted to mean that LADWP is agreeing with the CEC's position in the Regulations on a particular topic. LADWP supports the comments being filed concurrently by the

California Municipal Utilities Association (CMUA) and the Southern California Public Power Authority (SCPPA).[2]

a. Section 3201 – Definitions

i. Consistency with the Statute

As previous comments LADWP made on the Regulations,[3, 4] the CEC should use the definitions that are already provided in SB 2 (1X) and not create additional restrictions on such definitions. For example, Public Utility Code (PUC) Section 399.12 (f) defines the term "Procure" as "to acquire through ownership or contract," whereas Section 3201 (s) of the proposed Regulations defines "Procure" as "means to acquire electricity products from RPS certified facilities through execution of contracts or ownership agreements."

As a reminder, the California Public Utility Commission (CPUC) is also engaged in providing interpretations of SB 2 (1X) for Investor Owned Electric Utilities (IOUs) and there are areas where the legislation applies to both IOUs and POUs. For example, in PUC Section 399.31, SB 2 (1X) does envision the ability of IOUs and POUs to transact renewable energy credits. For the CEC and CPUC to achieve some level of

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[2] LADWP's comment (or lack of comment) on a specific topic should not be interpreted to mean that LADWP is agreeing with the CEC's position in the Regulations on a particular topic.

[3] Comments from the Los Angeles Department of Water and Power to the California Energy Commission's Staff Workshop on 33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft, dated March 30, 2012. Available At: http://www.energy.ca.gov/portfolio/documents/2012-03-01_workshop/comments/Los%20Angeles%20Department%20of%20Water%20and%20Power%20Response%20to%20the%20CEC%20RPS%20Draft%20Regulations.pdf

[4] Comments from the Los Angeles Department of Water and Power to the California Energy Commission's 33 Percent Renewables Portfolio standard Pre-Rulemaking Draft Regulations for Publicly Owned Electric Utilities, dated August 13, 2012. Available At: http://www.energy.ca.gov/portfolio/documents/2012-07-30_workshop/comments/LADWP_Response_to_RPS_Draft_Regulations_for_POUs_2012-08-13_TN-66935.pdf

consistency, the definitions of terms already found in the legislation should not be changed. LADWP recommends that the CEC conform to the definitions already provided by the Legislature.

ii. Necessary Definitions

For new terms, LADWP proposes that the CEC add or modify the following definitions:

1. Distributed Generation

Given that renewable distributed generators (like solar) are eligible renewable energy resources, and PUC Section 399.16 (b)(1)(A) allows for an eligible renewable energy resource connected to "distribution systems that serve end users within a California balancing authority area" to count as a Portfolio Content Category (PCC) 1 electricity product, Distributed Generation needs to be defined. LADWP recommends the following definition:

"Distributed Generation" means any "electric generation facility" as defined in the Public Utilities Code Section 399.32 and any "eligible renewable electrical generation facility" used by an "eligible customer-generator" as defined in PUC Section 2827(b)(4) and (5).

2. "Ownership Agreement" Definition Precludes Test Energy

The basic requirement for a Qualifying Electricity Product under Section 3202 requires that such procurement occurs "pursuant to a contract or ownership agreement." However, the current definition of "Ownership Agreement" states that:

(p) **"Ownership agreement"** includes: (1) An agreement between a POU and a third party to acquire or develop an electrical generation facility or (2) If the POU built and owns the electrical generation facility and therefore has no such agreement with a third party, the arrangement by which the POU built the facility, in which case the date of the arrangement for the purposes of Section 3202(a) is the commercial operation date of the facility.

This definition can potentially preclude the use of “Test Energy” or the desire of a POU to construct a project in phases that align with resource need and budgetary requirements.

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 recently completed a 10-Mega watt (MW) solar farm (Adelanto), a 8.5-MW solar farm (Pine Tree), and multiple solar installations on various Los Angeles City facilities. In different phases of development and permitting are additional self developed wind projects in the Tehachapi Mountains, small hydro projects, two solar farms in the Owens Valley exceeding 250 MWs, 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 long periods of time between initial energy production and final commercial operation date. Not counting the early energy production or test energy will have a financial impact to LADWP ratepayers and is clearly not a contemplated statutory concept.

LADWP requests that renewable electrical generation projects should be eligible once the project begins to supply test energy and any initial production energy to the grid, which can be years prior to the formal commencement of commercial operations.

3. Count In Full

As the definition for “Count in Full” significantly impacts the treatment of pre-June 1, 2010 resources, LADWP recommends that the CEC define the term “Count in Full.”

LADWP recommends that the CEC adopt a definition similar to the definition adopted by the CPUC[5]:

> (1) **"Count In Full"** means "Procurement from contracts or ownership agreement signed, or utility owned generation in commercial operation prior to June 1, 2010, and meeting the conditions set out in Pub. Util. Code § 399.16(d), may be counted for compliance with the California renewables portfolio standard without regard to the quantitative requirements for the use of each portfolio content category established by Pub. Util. Code § 399.16(c)."

Therefore, the proposed definition provides that pre-June 1, 2010 procurement is outside the Portfolio Balance Requirements; it neither counts nor does not count in any particular Portfolio Content Category. Furthermore, LADWP proposes to add to Section 3201 (a) Count in Full "At the discretion of the POU, procurement that meets current RPS Eligibility Guidebook requirements at the time the entity files for certification will count towards the Portfolio Content Categories and will be accounted for in the Portfolio Balance Requirements." This proposed definition allows utilities to count their grandfathered procurement in a PCC if such procurement meets the current edition of the Guidebook.

4. Incremental Electricity

The LADWP recommends that the CEC define the term "Incremental Electricity " and utilize the definition adopted by the CPUC:

> **"Incremental Electricity"** means electricity not in the portfolio of the POU claiming the transaction of RPS compliance prior to a Firmed and Shaped Transaction

[5] CPUC Decision, D.11-12-052, issued 12/21/2011, Order number 24, p.82

5. Firmed and Shaped

Given that the PCC 2 electricity products heavily rely on the term "Firmed and Shaped," LADWP recommends that the CEC define the term "Firmed and Shaped." The definition provided by the CPUC is acceptable:

> **"Firmed and Shaped"** means transactions that provide substitute energy in the same quantity as the contracted-for RPS-eligible generation, in order to fulfill the scheduling into a California balancing authority of the RPS-eligible generation, which can be set in a manner that meets the timing and quantity requirements of the retail seller. The original RPS-eligible generation is consumed elsewhere, typically but not necessarily close to the generator.

6. "Western Electricity Coordinating Council" (WECC) Definition

The current definition provided for WECC is slightly inaccurate. WECC is not part of the North American Electric Reliability Corporation (NERC): WECC has a delegation agreement with NERC to, among other things, oversee compliance monitoring and enforcement of Reliability Standards.[6] WECC is also undergoing a bifurcation process in which the regional entity will be potentially split into two entities, one which will administer all Reliability Standards activities and the other to handle all other WECC functions (such as its Reliability Coordinator function, etc.).

Since WECC is already defined in Section 399.12 (k) and recognizes that WECC can be subject to change, LADWP recommends that the CEC rewrite its definition to follow the definition already provided in statute:

> (ff) **"WECC"** means the Western Electricity Coordinating Council, or successor corporation as defined in PUC Section 399.12 (k).

[6] http://www.nerc.com/files/WECC_RDA_Effective_20120301.pdf

7. "RPS Certified Facility" definition

LADWP has previously commented that it does not fully agree with the CEC's proposed definition for "RPS Certified Facility."[7] LADWP recommends that the CEC definition be modified to the following:

> **"RPS-certified facility"** means a facility that the Commission has certified as being eligible for the RPS if:
> 1) The facility meets the Commission's RPS Guidelines; or
> 2) The facility was approved by a POU governing board prior to June 1, 2010.

LADWP recommends that if the CEC wish to apply its current certification process to pre-June 1, 2010 resources, it should be at the discretion of the POU with the ability to classify such resources in a PCC.

8. Consistency Between the Guidebook and the Regulations

The LADWP would like to generally comment that the CEC ensure the definitions provided in the Guidebook are consistent with the definitions provided in the proposed Regulations.

b. Section 3202 – Qualifying Electricity Products

i. Pre-June 1, 2010 Resources

As LADWP has previously commented[8], the CEC's interpretation on the treatment of pre-June 1, 2010 resources would retroactively apply certification

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[7] Comments from the Los Angeles Department of Water and Power to the California Energy Commission's Notice to Consider Adoption of Revisions to the Renewables Portfolio Standard Eligibility Guidebook and Overall Guidebook for the Renewable Energy Program, dated July 3, 2012. Available at: http://www.energy.ca.gov/portfolio/documents/comments_2012_guidebooks_adoption/LADWP_Comments_on_the_6th_Edition_RPS_Guidebook.pdf

[8] Comments from the Los Angeles Department of Water and Power to the California Energy Commission's 33 Percent Renewables Portfolio standard Pre-Rulemaking Draft Regulations for Publicly Owned Electric Utilities, dated August 13, 2012. Available At:

requirements to renewable resources previously adopted by POU governing boards prior to June 1, 2010. In PUC Section 399.16(d)(1) "rules in place" means the POU's adopted RPS Policy, not the CEC's RPS Eligibility Guidebook. Therefore, the LADWP recommends that the CEC change Section 3202 (a)(2) to the following:

> (a) An Electricity Product to be used for compliance towards the RPS Procurement Requirements specified in Section 3204 must meet one of the following requirements:
> (1) The Electricity Product is procured on or after June 1, 2010 or the Electricity Product is procured before June 1, 2010, and meets the Commissions RPS Eligibility Requirements at the time the entity submits a Certification Application.

c. Section 3203 – Portfolio Content Categories

i. PCC 1 Excess Generation Should Never be Redirected to another PCC

Section 3203 (a)(1)(C) currently states that:

> … If there is a difference between the amount of electricity generated and the amount of electricity scheduled and delivered into a California balancing authority, only the lesser of the two amounts shall be classified as Portfolio Content Category 1.

LADWP strongly believes that the excess renewable energy generated should, under no circumstance, count other than towards PCC 1, as this energy would still clearly be bundled and should still meet the definition of a PCC 1 resource. For LADWP, the number of times a specific renewable resource over-generates is fairly common. The current interpretation creates a tiered-structure for PCC 1 resources, which is not accounted for in several existing PCC 1-qualifying contracts. The Power Purchase Agreements (PPAs) signed by LADWP typically require the utility to take all generation from the renewable project. Taking only the scheduled amount is not a discretionary action and most contracts were not negotiated and executed to allow different payment

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http://www.energy.ca.gov/portfolio/documents/2012-07-30_workshop/comments/LADWP_Response_to_RPS_Draft_Regulations_for_POUs_2012-08-13_TN-66935.pdf.

for scheduled versus actual produced energy. Of greatest concern, this interpretation can inadvertently encourage other Parties to overschedule transmission, which can easily clog-up valuable transmission capacity and lead to inefficiency in grid operations.

The LADWP requests that the CEC allow utilities to count these excess electricity products under PCC 1, as these excess electricity products would still meet the interconnection and bundled product requirements of PCC1.

ii. Substitute Electricity Delivery Requirements are Unnecessary

Section 3203(b)(2)(A) currently states:

> (2) Portfolio Content Category 2 electricity products must be procured bundled and must meet all of the following criteria:
>
> (A) The first point of interconnection to the WECC transmission grid for both the eligible renewable energy resource and the resource providing the substitute electricity must be located outside the metered boundaries of a California balancing authority area.

The CEC substantiates its interpretation in the Initial Response of Reason (ISOR) by stating the intent of this requirement:

> Electricity products must originate from outside of a California balancing authority because PUC Section 399.16 (b)(2) specifies that products in this portfolio content category must be "scheduled into a California balancing authority."

However, this current interpretation of statute provides unintended consequences. Given that this interpretation is being introduced to POUs mid-way through the first compliance period, it effectively introduces a new Change of Law, which will hinder existing and future PCC 2 procurement.

The energy market thrives on economic decisions; contracted substitute energy providers (SEP) will likely replace RPS-eligible energy with a cost-effective product. As such, if substitute energy originating from California is cheaper than substitute energy produced from out-of-state, the SEP will procure the California-sourced energy and deliver it to the designated point of delivery (POD).

Currently, as interpreted by CEC staff, by limiting substitute energy to originate from outside of California, the CEC may inadvertently influence the energy market by earmarking out-of-state substitute electricity as the PCC 2-compliant product. This interpretation sets preference for non-California electricity, which could not have been the intent of the Legislature. Further, when in-state electricity is less expensive than out-of-state energy on the wholesale market, such an interpretation would encourage renewable energy vendors to export substitute energy out of California simply in order to meet the literal definition of a PCC 2-compliant product. Finally, such an interpretation would create regulatory uncertainty for existing contractual obligations that, for many utilities, do not specify the source of the substitute energy in their respective underlying agreements.

The LADWP requests that the CEC remove this interpretation, as this interpretation negatively affects market activity, operational flexibility, and effectively sets a preference for non-California energy for PCC 2.

iii. Calendar Year Restriction

Section 3203(b)(2)(D) currently states that:

> The substitute electricity used to firm and shape the electricity from the eligible renewable energy resource must be scheduled into the California balancing authority within the same calendar year as the electricity from the eligible renewable energy resource is generated.

In the ISOR, the CEC states that:

> The substitute electricity must be scheduled into a California balancing authority in the same calendar year that the electricity from the eligible renewable energy resource is generated. This requirement was in place for retail sellers under the RPS Guidelines that were in effect when SB 2 (1X) was passed and was generally understood to be part of the definition of "firmed and shaped" in California.

The LADWP believes that the CEC's explanation in the ISOR for the delivery of substitute electricity within the calendar year does not justify the restriction: This requirement unjustly adds unnecessary restrictions to PCC 2 electricity products.

In LADWP's experience, several firming and shaping entities perform balancing in January and February for December produced energy, which conflicts with the proposed Regulation. SB 2 (1X) did not contemplate a timeframe requirement for firming and shaping substitute energy delivery: There is no statutory basis to preclude a rolling 12-month approach, whereas there is an existing operational need for a rolling 12-month approach.

As all California utilities move closer to the 33 percent renewable energy compliance mandate, operational flexibility with firming and shaping is necessary for the reliability of the grid and to minimize the ratepayer cost of renewable energy integration. The arbitrary requirement of delivery within the year implements an unnecessary barrier and reduces the renewable technology and procurement options that a utility will have to operate a reliable electric grid.

Further, compliance with the RPS is judged on a compliance-period basis: Energy generated in 2012 and substitute electricity delivered in 2013 would still count within the same compliance period. Therefore, the restriction of a calendar-year delivery

approach simply because it was a requirement applicable to the IOUs prior to SB 2 (1X) is not acceptable.

The LADWP requests that the CEC remove the calendar-year restriction or replace it with a "rolling 12-month" approach, where a POU would be required to schedule the substitute electricity within 12 months from the date the electricity is generated.

d. Section 3204 – RPS Procurement Requirements

In Section 3204(a) subsections (2) and (3), the LADWP appreciates the CEC's consistent interpretation that the targets do not have to be achieved until the end of the compliance periods. However, there should not be any penalty on a POU if it dips below the target of the prior compliance period as long as it continues to achieve the target by the end of the compliance period. Consequently, if in year 2014 a POU dips to 19 percent of its retail sales, but ultimately achieves the target of 25 percent in year 2016, there shouldn't be a penalty. There may be a host of reasons for a dip in 2014 retail sales, one of which may be that as a POU ramps up its development to meet the target for 2016, there could be a delay in commercial operation of a renewable facility in 2014 that was not anticipated, but remedied in sufficient time to achieve the ultimate target of 25 percent by 2016.

In addition, in Section 3204(c) the language "RPS procurement targets as defined in Section 3204 (a)," could be misinterpreted to mean that the portfolio balance requirements may also apply to the interim years of retail sales that the CEC identified. This interpretation would impose an undue burden on the CEC and POUs and based on the numerical expressions in 3204 (c) (1)-(3) seems unintended. To make the

regulations less confusing, LADWP requests that the CEC reword this section to simply state “targets as identified in PUC Section 399.30 (c).”

e. Section 3205 – Procurement Plans and Enforcement Programs

The LADWP appreciates the CEC’s desire to be informed each time there is a status update to its governing board. However, this process may be too imposing given the possibility that each time a POU provides a status update there may be a penalty associated with failing to send the CEC information on the status update. The LADWP would like to remind the CEC that the public is informed of its public meetings, which may include status updates, via the requirements under the Brown Act.

The LADWP governing authority, which includes the Mayor and fifteen City Council Members, might discuss or provide a status update outside of the control, knowledge, or desire of the POU. A reasonable suggestion is that a POU be obligated to provide the CEC with information each time the governing board is presented with a recommendation for decision making, not just consideration.

f. Section 3206 – Optional Compliance Measures

i. Delays in Compliance

The Legislature recognized that in some instances the targets might be unachievable due to real-world implementation issues when looking at PUC Sections 399.15(e) and 399.19 in SB 2 (1X). The CPUC, “in consultation with the Energy Commission,” is required to report to the Legislature in “every even-numbered year” about “[t]he projected ability of each electrical corporation to meet the renewables portfolio standard procurement requirements under the cost limitations in subdivision

(d) of Section 399.15 and any recommendations for revisions of those cost limitations."[9]

Furthermore, a report to the Legislature is required "[n]o later than January 1, 2016":

> assessing whether each electrical corporation can achieve a 33 percent renewable portfolio standard by December 31, 2020, and maintain that level thereafter, within the adopted cost limitations.[10]

Reporting to the Legislature is the extent of the CEC's role when a POU may be faced with a delay. As stated above, SB 2 (1X) limits direct involvement by the CPUC in implementing a retail seller's plans until a retail seller notifies the CPUC to grant a waiver, or delay from compliance.

SB 2 (1X) is then specific as to the exceptions that will be allowed. Those exceptions are itemized in PUC Section 399.15 (b)(5), including transmission issues as in PUC Section 399.15(b)(5)(A) and some exceptions will not be allowed, as in failing to obtain a waiver from the CPUC per PUC Section 399.15(b)(8). No such similar authority is granted to the Energy Commission over POUs.

The LADWP would like to emphasize that PUC section 399.30 (c)(3) states that a POU "shall adopt procurement requirements consistent with PUC Section 399.16" and PUC Section 399.30(d) states that a POU governing board "may adopt the following measures." The CEC's authority is therefore limited to determining whether POUs abide by their procurement plan.

LADWP would also like to remind the CEC that procurement plans are continuously being shaped by technology, community engagement processes, and system modeling. Further, the POU's resource procurement and ratemaking process is different from an IOU's, as they are consolidated within the POU and costs are

[9] PUC §399.19
[10] Id.

recovered directly from the POU's customer-owners. It is paramount that POUs maintain discretion over costs and delays incurred while procuring eligible renewable energy resources.

As such, the POU governing boards should continue to have the authority to adopt rules sustainable for their specific POU structure. The CEC's authority under PUC Section 399.30(b) is therefore limited to determining whether POUs abide by their procurement plan.

ii. Change In Law Effects

A major concern between POUs and project developers (Developers) is the risk associated with Change in Law. Change in Law risks affect all contracts/agreements executed for compliance with California's RPS moving forward, the ponderous point of contention between parties in negotiations is "Who should bear the risk of Change in Law? The Utility or the Developer?" It is getting harder and harder to negotiate contracts due to this issue, which can significantly increase the cost and/or risk of a project, as well as complicate the project's underwriting process to the point of infeasibility. This is not a speculative risk: it is real and has already affected several POUs and developers. Developers constantly point to the Biomethane Moratorium installed March 29, 2013, which instituted economic impacts on historical decisions. As such, parties refuse to accept the Change of law liability due to certification or PCC contingencies.

The CEC needs to be cognizant that changes (whether they be considered miniscule or not) have a significant effect on procurement decisions made by POUs and will impact meeting compliance. Therefore, the CEC needs to add "Change of Law" to Section 3206.

g. Section 3207 – Compliance Reporting for POUs

Based on the detailed and potentially voluminous information the CEC is requesting in Section 3207(c), the LADWP suggests that a provision be added to 3207 (g) to allow a grace period to self-report missing information or to correct information, or even to supplement the information as it becomes available, without violation of the proposed regulations. A reasonable time period for POUs to self-report would be a grace period of 90 days. This self-reporting opportunity would be in addition to the process identified in 3207 (g).

h. Section 3208 – Enforcement

The Enforcement Section, 3208, does not provide any time period for the CEC to file a complaint, or perform audits, recordkeeping, or verification of data. Similarly, Section 3207 (g) does not provide POUs with any certainty as to a time deadline of when the Executive Director may determine that a POU's report is incorrect or incomplete. For planning purposes, there should be finality with respect to enforcement of the regulations and audits for compliance periods.

PUC Section 399.25 requires the CEC to develop an accounting system for SB 2 (1X). However, there isn't a time period for the CEC to complete an audit, or verify information, or compliance reporting in the draft regulations. While the Record Keeping section in the proposed 7th Edition of the Guidebook requires records to be kept for "no fewer than 3 years" (p. 146), there is no equivalent time period for the CEC to begin or complete an audit, verify information for reporting, or enforce the proposed regulations. It would provide POUs much needed certainty to be able to report on existing resources and targets and plan for additional resources and compliance obligations while knowing

its obligations under enforcement have either been satisfied or are no longer considered for retroactive enforcement.

The LADWP proposes that the CEC add language to Section 3208 to include a time period of 3 years for the CEC to commence an enforcement action against a POU. Here is suggested language:

The CEC must file a complaint against a POU pertaining to the enforcement of a RPS requirement, or any regulation, order, or decision adopted by the Commission pertaining to the RPS within three years.

i. Section 1240 – Renewables Portfolio Standard Enforcement

The Chief Counsel should have the authority to grant an extension of time to a POU for answering a complaint or replying to a response. This authority may be provided in subsections (d) and (e), respectively.

j. CEC's Authority under SB 2 (1X)

The authority of the CEC in the California Renewable Energy Resources Act (commonly known as and referred to as SB 2 [1X]) is set forth in Section 399.25 of the PUC. In this Section, the Legislature mandated the CEC to (a) "certify eligible renewable energy resources;" (b) "design and implement an accounting system" to count renewable energy, to certify renewable energy credits and to verify retail product claims; (c) "establish a system for tracking and verifying renewable energy credits;" and (d) certify renewable energy credits so that POUs may transact with all retail sellers. There are other places where the Energy Commission is specifically mentioned. However, these generally relate to the Legislature's intent and the aforementioned duties in PUC Section 399.25. For example, PUC Section 399.12 (e)(1)(C) directs the

CEC to certify "an eligible renewable energy resource" if it was approved by a POU "pursuant to former Section 387."[11]

As such, LADWP disagrees with proposed Regulations that are beyond the scope of the CEC's jurisdictional authority under SB 2 (1X). The only grant of authority to the CEC over POUs or their governing boards is to "adopt regulations specifying procedures for enforcement of this article" pursuant to PUC Section 399.30(n). The CEC's Regulations must not exceed the specific regulatory authority granted to the CEC under SB 2 (1X) or abrogate the authority of a POU's governing board.

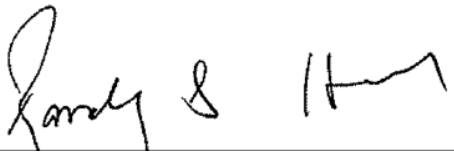
[11] See also 399.12 (h)(1) [accounting system for renewable energy credits], 399.12(h)(3) [accounting system for "de minimis nonrenewable fuels" for each renewable energy technology], 399.21(a)(1) [tracking system is operational], 399.21(a)(5) [tracking of electricity purchase contract for retail sellers, Section 399.17(b)(2) and (3) [electrical corporations serving 60,000 or fewer customers participates in the Energy Commission's accounting system], 399.18 [electrical corporations with a limited number of customers participates in an accounting system], 399.19 [reporting to the Legislature of its progress].

IV. CONCLUSION

The LADWP remains committed to transitioning to a greater usage of a renewable energy resource mix in a cost-effective manner while maintaining grid reliability. LADWP appreciates the opportunity to comment on the proposed Regulations, to make such regulations more consistent with the legislative intent of SB2 (1X) and not to abrogate the authority of LADWP's governing board or the Los Angeles City Council. LADWP looks forward to continue working with the CEC in this proceeding.

Dated April 16, 2013

Respectfully Submitted,

By: 

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