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May 9, 2014

Robert B. Weisenmiller, Ph.D., Chair
California Energy Commission
Office of the Commission
1516 Ninth Street, MS-33
Sacramento, CA 95814

Michael J. Levy, Chief Counsel
Office of Chief Counsel
California Energy Commission
1516 Ninth Street, MS-14
Sacramento, CA 95814

Re: Letter of Appeal for Denying LADWP's Petition for Reconsideration of Applications for Renewables Portfolio Standard (RPS) Certification for the Castaic Power Plant, Units 3 and 5, RPS ID 62561A

Dear Messrs.' Weisenmiller and Levy:

This Letter of Appeal is provided to the California Energy Commission (CEC or Energy Commission) to appeal the Office of the Executive Director's decision to deny the Petition for Reconsideration filed by the Los Angeles Department of Water and Power (LADWP). The CEC staff and the Executive Director have decided that the Castaic Power Plant is not eligible for RPS certification for the category of "Incremental Hydroelectric Generation from Efficiency Improvements Regardless of Facility Output" for Units 3 and 5.¹ The CEC staff's letter of ineligibility is dated January 14, 2014 and Executive Director's denial letter is dated April 10, 2014. In addition to the arguments presented in LADWP's petition for reconsideration, dated February 13, 2014, incorporated herein by this reference and enclosed herewith, LADWP bases its Letter of Appeal on the grandfathering provision of California Renewable Energy Resources Act (SBX1-2) found in Public Utilities Code Section (PUC) 399.12(e)(1)(C) for the following reasons:

1. The series of guidebook editions, since SBX1-2 became effective, did not address the actual certification of grandfathered resources found in PUC Section 399.12(e)(1)(C), other than the timing to submit an application, which impacts LADWP's application for certification of its Units 3 and 5 of its Castaic Power Plant;
2. The "Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities" (POU Regulations),² which became effective a mere three months before the end of the first compliance period does not address the actual certification of grandfathered resources found in PUC 399.12(e)(1)(C) or relief from retroactive impacts beyond the POU's control;

¹ Public Utilities Code Section 399.12.5 (b)(3)

² Enforcement Procedures For the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities. California Energy Commission. Publication Number CEC-300-2013-002-CMF. Effective October 1, 2013.

3. The delay in time it took for the POU Regulations to become effective coupled with the delayed review and response process by the CEC, including staff, the Executive Director, and this Commission regarding certification applications for grandfathered resources prevented LADWP to purchase RECs for the first compliance period.

There is no process or procedure afforded a local publicly owned electric utility (POU), such as LADWP, to purchase Renewable Energy Credits and apply them retroactively for the first compliance period under SBX1-2. The CEC Regulations prohibit the use of Renewable Energy Credits for previous compliance periods, which hinders a POU's ability to makeup shortfalls. The impact of this lack of procedure is that LADWP cannot mitigate any impact from a negative decision by the CEC for any of the grandfathered resources it has sought to certify, especially since the negative decision has come after the conclusion of the first compliance period. Of utmost importance is the fact that investments made by LADWP on behalf of its ratepayers at Castaic Power Plant are perpetual RPS-eligible resources and the CEC's proposed action overrides RPS decisions made by the Los Angeles Board of Water and Power Commissioners and the Los Angeles City Council as early as 2008. LADWP needs relief at this time under either a broad policy and procedural directive or a specific directive.

The action LADWP would like the CEC to take is to:

- 1) Certify its units for the RPS, and
- 2) Permit LADWP to count the RECs generated from these units during the first compliance period, or
- 3) At the very least, certify Unit 3.

The authority that the CEC may rely on for such a remedy is found in the grandfathering provision, under PUC Section 399.12(e)(1)(C); the former PUC Section 387, which was in effect until December 9, 2011. In addition, the delayed action by CEC staff warrant the limited certification during the first compliance period based on principals of equity and fairness. Furthermore, LADWP has reason to believe that its ratepayers would benefit from the relief sought because the units at the Castaic Power Plant help LADWP meet its RPS goals it set for itself under the voluntary program of PUC Section 387 and the current targets found in PUC Section 399.30, which would reduce an impact on the electricity rates for its ratepayers.³

The CEC Needs a process for counting RECs during the review process by the CEC staff, For Grandfathered Resources For Certification Applications Submitted During the First Compliance period, As Permitted by the Seventh Edition RPS Guidebook As Late As December 31, 2013.

The Legislature recognized and facilitated the transition from the voluntary renewables program for POUs for renewables under PUC Section 387 to the mandatory program in SBX1-2 with the grandfathering provision found in PUC Section 399.12(e)(1)(C). This provision requires the CEC

³ This paragraph is provided in compliance with 20 California Code of Regulations Section 1231.

to certify POU's resources that it used to satisfy its voluntary RPS program pursuant to PUC Section 387.

In 2002, then “current law exempt[ed] local publicly owned utilities from the state RPS program.”⁴ Each “governing board of a local publicly owned electric utility would be responsible for implementing and enforcing a renewables portfolio standard” that recognized the goals of the Legislature, which included encouraging renewable energy resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources.⁵ The California Senate expressly stated, “[t]his bill [SBX1-2] grandfathers all contracts consummated by an IOU, ESP, or POU prior to June 1, 2010.”⁶ The Legislature knew that POU's were given “flexibility in developing utility-specific targets, timelines, and resource eligibility rules” per PUC Section 387 as part of SB 1078.⁷

In the ensuing years, the City of Los Angeles adopted RPS Policies to encourage renewable energy resources, including a RPS in 2008 with “hydroelectric incremental generation from efficiency improvements.”⁸ This addition was intended to capture and support the efficiency improvements gained by the hydroelectric generation by the Castaic Power Plant units.

The series of CEC RPS Eligibility Guidebook editions, since SBX1-2 became effective, do not address the actual certification of grandfathered resources found in PUC 399.12(e)(1)(C), which requires the CEC to certify a POU's resources that a POU included in its RPS during its voluntary program in a non-discriminatory manner while preserving POU historic decisions promulgated by their respective Boards and City Councils. The sixth and seventh editions only address the timing of when to submit a certification, which according to the seventh edition was to be done by December 31, 2013.

However, there is no process for counting RECs during the review process by the CEC staff, or the Executive Director, or letter of appeal process, especially when the compliance period for which LADWP needs to count the RECs has already passed. LADWP originally submitted the application for certification for Castaic Units 3 and 5 in September 2012. The Energy Commission staff letter of RPS ineligibility is dated January 14, 2014, almost 1 ½ years later and after the end of the first compliance period.

Moreover, the POU Regulations prohibit LADWP from purchasing any RECs now to comply with targets for the first compliance period. Section 3202 (d) of the CEC's regulations states:

⁴ See Senate Energy, Utilities and Communications Committee Description in the Bill Analysis for SBX1-2, February 15, 2011.

⁵ Id; and see Legislative Counsel's Digest to SB 1078, subsection (3).

⁶ Senate Energy, Utilities and Communications Committee Description in the Bill Analysis for SBX1-2, February 15, 2011.

⁷ Senate Energy, Utilities and Communications Committee, Background in the Bill Analysis for SB2 (1X), February 15, 2011.

⁸ See LADWP Board letter and Resolution, certified as adopted by the Board Secretary, May 20, 2008; ¶5. The inclusion of the additional RPS eligible technologies in this policy was initiated when the CEC issued its Third Edition RPS Eligibility Guidebook in January 2008.

(d) A POU may not use a REC to meet its RPS procurement requirements for a compliance period that precedes the date of generation of the electricity associated with that REC. For example, a POU may not retire a REC associate with electricity in April 2014 to meet its RPS procurement requirements for the 2011-2013 compliance period.⁹

The timing of the response from the Energy Commission makes it impossible for LADWP to make-up the difference for the generation lost from Castaic Power Plant during the first compliance period. In addition, the POU Regulations were not effective until October 1, 2013, more than two years late and only a few months before the end of the first compliance period.¹⁰

These delayed actions along with the Energy Commission staff's delayed interpretations that seek ways to exclude rather than include grandfathered resources severely impacts LADWP's interests in its resources approved in its RPS Policy pursuant to PUC Section 387.

This lack of due process harms LADWP because there is no recourse to mitigate impacts to LADWP's RPS program, portfolio, or the RECs counted for its first compliance period. This warrants immediate attention by this Commission, to provide a reasonable and workable remedy addressing this basic due process need missing from the CEC's RPS Guidebooks and POU Regulations.

The CEC should Certify Unit 3 of the Castaic Power Plant

While LADWP is still interested within Unit 5 certification, the positions presented by the Executive Director to LADWP in the letter dated April 10, 2014, focus on the possibility that Unit 3 of the Castaic Power Plant may qualify for RPS eligibility. The Executive Director suggested LADWP should consider to re-applying for certification. However, as discussed above, there is no process to allow LADWP to apply for certification of a grandfathered resource after the first compliance period and guarantee that the RECs apply retroactively to the first compliance period.¹¹ Therefore, at a minimum the CEC should certify Unit 3.

The language of PUC Section 399.12.5(b)(3) that the Energy Commission staff and Executive Director focused on was "efficiency improvements were not included in any resource plan sponsored by the facility owner prior to January 1, 2008." The storied past of the Castaic Power Plant lends itself to focus on the term "sponsored." There were "plans" but only when the authority to proceed with budgets were authorized by the LADWP Board and, specifically for Unit 3, after the Los Angeles City Council authorized the work on Unit 3, could LADWP proceed with the improvements. Decisions by the LADWP Board are subject to further approval or re-consideration

⁹ Enforcement Procedures For the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities. California Energy Commission. Publication Number CEC-300-2013-002-CMF. Effective October 1, 2013.

¹⁰ PUC Section 399.30 (l), which states that "[o]n or before July 1, 2011, the Energy Commission shall adopt rules specifying procedures for enforcement of this article."

¹¹ At the April 22, 2014 CEC Business Meeting, the Commission approved a **Time Extension Process for Certification** that provides a time extension process that allows the Executive Director to extend and waive application deadlines for the Renewables Portfolio standard certification under specified criteria. This process, however, does not guarantee approval of the waiver from the Executive Director.

by the City Council. For Unit 3, it required the approval of the Los Angeles City Council, which occurred on October 15, 2008.¹²

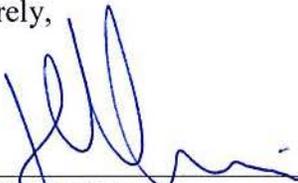
The mechanical upgrades for the improvements for Unit 3 were initiated in October 2008. Unit 3 was fully operational in July 2009. Unit 3, at the very least, should be certified by the CEC.

Conclusion

There is no process afforded LADWP to mitigate a negative decision by the CEC impacting the application for certification of a grandfathered resource, which under PUC Section 399.12, should be certified. This lack of due process warrants immediate attention by this Commission to provide a reasonable and workable remedy currently missing from the CEC's RPS Guidebooks and POU Regulations.

The action LADWP would like the CEC to take is to (1) certify its units for the RPS, and (2) permit LADWP to count the RECs generated from these units during the first compliance period, or (3) at the very least, certify Unit 3.

Sincerely,



John Richard Dennis
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Chief Compliance Officer – Power System
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Enclosures:

1. CEC letter of RPS ineligibility, dated January 14, 2014
2. LADWP Petition for Reconsideration, dated February 13, 2014
3. CEC Denial letter from Executive Director, dated April 10, 2014

¹² Los Angeles City Council File No. 08-2420

VERIFICATION

I, John R. Dennis, am the Director of the Power System Planning and Development and Chief Compliance Officer of the Power System at the Los Angeles Department of Water and Power (LADWP). I have been working as an engineer and manager at LADWP since 1982. I received my Bachelor of Science in Mechanical Engineering from California State University, Northridge and I am a California licensed Professional Mechanical Engineer.

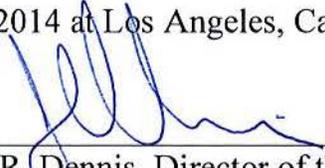
I declare the following:

1. I am authorized to make this verification on behalf of LADWP;
2. The factual matters stated within LADWP's Letter of Appeal for Denying LADWP's Petition of Reconsideration for its applications for Renewables Portfolio Standard (RPS) Certification for the Castaic Power Plant, Units 3 and 5, RPS ID 62561A are true and accurate to the best of my knowledge and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 9th day of May 2014 at Los Angeles, California.

By: _____


John R. Dennis, Director of the Power System
Planning and Development and Chief
Compliance Officer - Power System,
Los Angeles Department of Water and Power