BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	)))	R. 11-05-005

OPENING COMMENTS OF THE LOS ANGELES DEPARTMENT OF WATER AND POWER TO THE ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON IMPLEMENTATION OF THE NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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In accordance with Rule 6.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (CPUC, or Commission) and the *Administrative Law Judge's Ruling Requesting Comments on Implementation of the New Portfolio Content Categories for the Renewables Portfolio Standard Program* (Request for Comments), dated July 12, 2011, the Los Angeles Department of Water and Power respectfully submits these opening comments, responses to the questions issued in the Request for Comments.

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.

The City of Los Angeles has supported renewable energy development to serve its long-term sustainability and resource goals: LADWP transitioned from approximately 5% renewables on 2005 to 20% renewables on 2010. Along with the support of renewable

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energy development, LADWP's foremost priorities are to protect its ratepayers from unnecessary rate impacts and ensure the continuous reliable operation of its electric grid.

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 emissions (GHGs) reduction, elimination of once-through cooling of its coastal power plants, the Renewable Portfolio Standard (RPS) goals of 33% as currently mandated by state law, and the reliable integration of increasing amounts of renewable resources.

Section 399.30 (p) clearly recognizes that local governing boards have jurisdiction to enforce the California Renewable Energy Resources Act (also known as and referred to as SB 2 (1X)) on their respective Publicly-Owned Electric Utilities (POU's).[1] Nevertheless, LADWP provides these comments to the CPUC to inform its decision-making process, since discussions in this proceeding may impact decisions to be made by the California Energy Commission (CEC) and POU governing boards.

Furthermore, LADWP generally supports the comments filed concurrently by the California Municipal Utilities Association (CMUA).

II. COMMENTS

California's most recent legislation for its Renewables Portfolio Standard Program ("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

[1] All code section references are to the Public Utilities Code, unless otherwise specified.

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resources."[2] Since LADWP is a local publicly owned electric utility, it is required to comply with SB 2 (1X).

Furthermore, SB 2 (1X) requires that POUs governing board adopt an enforcement program by January 1, 2012. In order to develop an enforcement program in-line with SB 2 (1X), it is important for the CPUC and the CEC quickly address the changes made by the new §399.16.

Below are LADWP's responses to 20 of the 24 questions issued in the Request for Comments.

1) **Section 339.16 (b) (1) describes "eligible renewable energy resource electricity products" that meet certain criteria. "Electricity products" is not defined in the statute. Should this term be interpreted as meaning "RPS procurement transactions"?**

Response to Question 1:

"Electricity products" should not be interpreted as meaning "RPS procurement transactions." Both of these terms are undefined in the legislation. The CPUC should proceed with caution when defining terms in the legislation. It is unproductive to define an undefined term with another undefined term.

In addition, though the term is not explicitly defined in the legislation, the term "Electricity products" *is* characterized in SB 2 (1X), which is sufficient to meet the legislative intent and goals of the California Renewable Energy Resources Act. Section 399.16(a) states that "[e]lectricity products may be differentiated by their impacts on the operation of the grid in supplying electricity, as well as, meeting the requirements of this article." By the use of the term in **§**399.16, "Electricity products" would include any electrical energy that is being scheduled into the grid, including firmed and/or shaped

[2] SB 2 (1X) §399.16 (a)

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energy, incremental energy, or beneficial environmental attributes of the energy, such as renewable energy credits.

2) Should the first sentence of §399.16(b)(1)(A) be interpreted as meaning: "The RPS-eligible generation facility producing the electricity has a first point of interconnection with a California balancing authority (BA), or has a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or the electricity produced by the RPS-eligible generation facility is scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source."

Response to Question 2:

The interpretation listed above is valid as long as the definition of "RPS-eligible generation facility producing the electricity" includes the definition of "renewable electrical generation facility" found in the Public Resources Code Section 25741.

3) Please provide a comprehensive list of all "California balancing authority[ies]" as defined in new §399.12(d).

Response to Question 3:

As requested, the California BAs[3] that fit the definition set forth in §399.12 (d) are as follows: (1) Balancing Authority of Northern California; (2) California Independent System Operator (CAISO); (3) Imperial Irrigation District; (4) Los Angeles Department of Water and Power; and (5) Turlock Irrigation District.

4) How should the phrase in new §399.16(b)(1)(A) "...scheduled from eligible renewable energy resource into a California balancing authority without substituting electricity from another source" be interpreted? Please provide relevant examples.

Response to Question 4:

[3] The list provided above is based off the 2011 NERC Entity Registration Matrix. Available @: http://www.nerc.com/files/NERC_Compliance_Registry_Matrix_Sorted_by_Entity20110729.pdf

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The phrase "scheduled from eligible renewable energy resource into a California Balancing Authority" should encompass all possible scheduling methods, including scheduled into a California BA using a generator-tie into a BA, or from one BA to the ultimate California BA, or using multiple BAs to ultimately serve California load. Hence, an eligible renewable resource does not have to be directly connected to a California BA. The intent of this phrase is to show a complete path of scheduled electricity products from a renewable energy resource into a California BA.

For example, the Willow Creek Wind Project (Willow Creek) is interconnected to the Bonneville Power Administration's (BPA's) BA, a non-California BA. The energy generated from this project is scheduled by a Purchasing/Selling Entity (PSE) directly to LADWP as a California BA at the Nevada/Oregon Border (NOB) scheduling point. The energy from Willow Creek, an eligible renewable energy resource, is scheduled into a California BA, regardless of the fact that it has to use BPA's interconnection to ultimately reach a California BA. This example supports the position that the intent of the phrase is to show a complete path of scheduled electricity products from a renewable energy resource into a California BA.

In addition, the phrase "scheduled from eligible renewable energy resource into a California Balancing Authority without substituting electricity from another source" means that only *scheduled* energy from an eligible renewable energy resource may be counted towards the §399.16 (b)(1)(A) portfolio content category. For example, if 100 MW are scheduled into a California BA, but 110 MW are actually generated and received by the BA, then the 100 MW scheduled would fall under §399.16 (b)(1)(A) and the additional 10MW

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received would fall under §399.16(b)(2) or under §399.16(b)(3) portfolio content category.

Vice versa, if 100 MW are scheduled but only 90 MW are actually received by the BA, then the 90 MW actually received would count towards §399.16 (b)(1)(A) and the additional 10 MW needed by the BA to maintain the load in its balancing authority area would count towards either §399.16(b)(2) or under §399.16(b)(3). This assumes that the additional 10 MW, the difference of energy needed by the BA, is from an eligible renewable energy resource.

The accounting for the eligible renewable electricity products by a BA for meeting the portfolio content categories under the phrase "scheduled from eligible renewable energy resource into a California Balancing Authority without substituting electricity from another source" would depend on the ability to match the scheduled energy with the energy actually received by the BA. In the case of Windy Point, a renewable energy resource, where the total MWh received by the BA for a year was found to have exceeded the MWh scheduled at NOB, the energy scheduled would fall under §399.16 (b)(1)(A), while the additional Renewable Energy Credits (RECs) would fall under §399.16 (b)(2) or §399.16 (b)(3).

Another example of accounting for portfolio content categories would be from the Willow Creek facility. To maintain a firm energy schedule over the course of each day, a PSE either absorbs extra Willow Creek generation or supplies energy from its Hermiston Combined Cycle Gas-Fired Generating Station (also located in BPA's BA). For each hour, either the scheduled energy or the metered Willow Creek generation, whichever is less, would count towards the §399.16 (b)(1)(A) category. Any RECs matched with previously

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unmatched energy that PSE received over a specified time period would be counted towards the §399.16(b)(2) category. Any RECs still unmatched would be counted towards the §399.16(b)(3) category.

5) Does this inclusion of transactions characterized in #4, above, subsume or resolve the work done by Energy Division staff and the parties response to Ordering Paragraph 26 of Decision (D.) 10-03-021[4] regarding transactions using firm transmission?

Response to Question 5:

LADWP does not have a comment to this question at this time. However, LADWP reserves the right to respond to the issue of "*how to classify transactions for RPS procurement that include firm transmission arrangements but not dynamic transfers to a California balancing authority*," during these proceedings.

6) How would transactions characterized in #4, above, be tracked and verified? Please address the roles and responsibilities of both the CEC and the Commission.

Response to Question 6:

An entity's monthly and yearly energy balancing process would be appropriate methods of tracking electricity products from eligible renewable energy resources. The metrics should be no more frequently than monthly and may depend on the portfolio content category. For example, LADWP, as a California BA, would track and verify the renewable energy actually received on a monthly basis for the §399.16(b)(1)(A) category, and annually for the §399.16(b)(2) and §399.16(b)(3) categories. At the end of each

[4] Ordering Paragraph 26 of Decision (D.) 10-03-021 states the following: *The Director of Energy Division shall take appropriate steps to obtain information that will enable a definitive determination of how to classify transactions for RPS procurement that include firm transmission arrangements but not dynamic transfers to a California balancing authority and will allow the development of criteria for reviewing and evaluating such contracts that are presented for Commission approval. The Director of Energy Division may also, in the Director's discretion, provide recommendations to the Commission about the classification and evaluation of such transactions. Such recommendations may be in the form of a report, or in the form of a resolution prepared for the Commission's consideration.*

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month or year, the portion of electricity required to maintain a balance in the balancing authority area that is not renewable will not be counted towards RPS compliance and the portfolio content categories.

LADWP would track and verify its transactions by using contracts on file, meter records or the Western Renewable Energy Generation Information System (WREGIS) account uploads for the respective sources, and either e-tags or, if the energy is not e-tagged, transaction records from LADWP's own energy scheduling system. LADWP would then file reports to the California Energy Commission (CEC), which could then process these reports and certify renewable energy facilities, as appropriate. LADWP does not foresee the CPUC playing a role in this process for POUs.

7) Please provide relevant examples of the situation described in the second sentence of §399.16(b)(1)(A): "the use of another source to provide real-time ancillary services required to maintain an hourly or sub-hourly import schedule into a California Balancing Authority ..."

How should the subsequent qualifying phrase, "but only the fraction of the schedule actually generated by the eligible renewable energy resources shall count toward this portfolio content category" be interpreted in light of your response? Please provide relevant examples.

Response to Question 7:

The only energy counted towards the §399.16 (b)(1)(A) category should be firm renewable energy scheduled from an eligible renewable energy resource. For example, as discussed above, if 100 MW are scheduled but 110 MW are actually generated and received, the 100 MW would fall under §399.16 (b)(1)(A) and the additional 10MW generated may fall under §399.16(b)(2) or under §399.16(b)(3) category.

However, if 100 MW are scheduled but only 90 MW are actually generated and received, the 100 MW schedule would have to be firmed up using 10 MW of system power

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from the balancing authority. In this situation, the 90 MW actually generated by the eligible renewable energy resource would count towards the §399.16 (b)(1)(A) category, but the remaining 10 MW of firming system power may only be counted towards the §399.16(b)(2) or §399.16(b)(3) category if it came from an eligible renewable energy resource; otherwise, it would not be counted. Please refer to the examples provided in Sec. II.4 of this response.

An entity's monthly and yearly energy balancing would be an appropriate method for tracking. Please refer to the example provided in Sec. II.6 of this response.

8) Should §399.16(b)(1)(B) be interpreted as meaning: "The RPS-eligible generation facility producing the electricity has an agreement to dynamically transfer electricity to a California balancing authority."

Response to Question 8:

The interpretation provided above is invalid. An RPS-eligible generation facility does not contract to dynamically transfer electricity into a California BA. This is a relationship that needs to take place between BAs, to allow for the dynamic transfer of electricity. This is, an interaction that takes place between BAs, to allow for the dynamic transfer of electricity.

Dynamic energy is energy exchanged between two BAs such that the instantaneous amount of energy exchanged during the hour can vary intermittently and unpredictably (i.e., in a random manner, not planned in advance). A dynamic transfer may occur only if the two adjacent BAs involved can accommodate, and agree to accommodate, such a transfer.

9) The phrase "unbundled renewable energy credit" (REC) is not defined in the statute. Should it be interpreted as meaning: "a renewable energy credit [as defined in new §399.12 (h)] that is procured

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separately from the RPS-eligible energy with which the REC is associated"?

Response to Question 9:

An unbundled REC is an underlying commodity with *beneficial environmental attributes* that may be obtained ***separately*** from the originating energy. Therefore, unbundled RECs can be procured separately from the RPS-eligible energy with which the REC is associated.

10) "Unbundled renewable energy credits" are a type of transaction meeting the criteria of §399.16(b)(3). Does §366.16(b)(1) include any transactions that transfer only RECs but not the RPS-eligible energy with which the RECs are associated (for example, a transaction in which an RPS-eligible generator having a first point of interconnection with a California balancing authority sells unbundled RECs to a California retail seller)? Why or why not?

If your response is that unbundled REC transactions are or may be included in §399.16(b)(1), please also address how a particular transaction can be characterized and verified as belonging in a particular portfolio content category.

Response to Question 10:

LADWP supports CMUA's response to Question 10. The CPUC should allow for flexibility in interpreting §399.16(b)(1)(A) portfolio content category. Also, WREGIS may verify an unbundled REC, since WREGIS identifies the name and location of the generating facility generating the REC.

11) Section 399.16 (b)(3) includes "[e]ligible renewable energy resource electricity products, or any fraction of the electricity generated, including unbundled renewable energy credits, that do not qualify under the criteria of paragraph (1) or (2)."

i. **Should the phrase, "or any fraction of the electricity generated" be interpreted as meaning "any fraction of the electricity generated by the eligible renewable energy resource"?**

Response to Question 11.i:

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Yes, the phrase "or any fraction of the electricity generated" should be interpreted as meaning "any fraction of the electricity generated by the eligible renewable energy resource."

ii. **What metrics should be used to account for "any fraction of the electricity generated?" Please address the time period that may be encompassed in your response.**

Response to Question 11.ii:

Please refer to LADWP's response in Sec. II.6.

iii. **How would the procurement of any fraction of the electricity generated be documented? Please address the roles of the WREGIS, the CEC, and the CPUC.**

Response to Question 11.iii:

The existing standard BA scheduling protocols need to be used as much as possible. If the energy originated from a California BA, then the energy has already been scheduled and delivered. Certain renewable resources, such as solar and biogas, and facilities, such as hydroelectric efficiency upgrades, should be part of the guidelines. The CPUC should provide as much flexibility as possible to demonstrate compliance.

12) "Firmed" is not defined in SB 2 (1X). Please provide a definition or description of this term. Please include relevant example.

Response to Question 12:

The term "Firmed" should be defined as energy that is removed and/or supplied over the course of the smallest scheduling time increment in order to balance an energy schedule for that time increment. In general, BAs maintain firm schedules as defined in their tariff and under operational requirements by which they must abide, such as Western Electricity Coordinating Council (WECC) requirements or procedures.

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For example, under the PPM Wyoming contract (a.k.a. Pleasant Valley Wind Farm), a facility generator sends wind energy into the PacifiCorp East Area (PACE) BA. PACE then "firms" the energy on an hourly basis in order to schedule a constant energy flow to LADWP at the Mona 345 kV station over the course of each hour.

13) "Shaped" is not defined in SB 2 (1X). Please provide a definition or description of this term. Please include relevant example.

Response to Question 13:

The term "Shaped" should be defined as energy delivered in a pre-specified profile schedule, such as over a series of hours in a day, month or year. In general, PSEs shape their schedules as defined in their renewable contracts.

For example, in order to maintain an energy schedule over the course of each day, PSE either absorbs extra Willow Creek generation or supplies energy from its Hermiston Combined Cycle Gas-Fired Generating Station (also located in BPA's BA). For each hour, either the scheduled energy or the metered Willow Creek generation, whichever is less, would count towards the §399.16 (b)(1)(A) category. Any leftover RECs matched with previously unmatched energy that PSE delivered over the course of the year would be counted towards the §399.16(b)(2) category. The PSE's operations effectively "shape" the leftover RECs of Willow Creek for LADWP based on the renewable contract.

14) "Incremental electricity" is not defined in SB 2 (1x). Please provide a definition or description of this term. Please also address:

i. How a particular transaction can be characterized as providing incremental electricity;

ii. Whether there are or should be any more particular relationship between the generation of the RPS-eligible electricity and the scheduling of the "firmed and shaped" incremental electricity into a California balancing authority (for example, the electricity must be scheduled into a California balancing authority within one month of its generation; or, the energy that is delivered

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must come from generators in the same balancing authority area as the RPS-eligible generation).

iii. Whether the definition proposed is based on contract terms or on the characteristics of the electricity that is ultimately delivered into a California balancing authority.

Please provide relevant examples.

Response to Question 14:

As inferred from § 399.16 (b)(2) of the statute, in general, the term "Incremental energy" is energy needed to firm and/or shape an eligible renewable energy resource in order to make schedules and deliveries into a California BA whole. The statute did not contemplate or specify a timeframe requirement for firming or shaping. Such energy is not counted towards RPS compliance until it is scheduled and delivered.

As noted in Sec. II.15 below, there may be times where incremental energy would be used for a "fixed dispatch" (i.e. non-intermittent) renewable energy resource.

15) Should § 399.16(b)(2) be interpreted to refer only to energy generated outside the boundaries of a California balancing authority, or may it refer also to energy generated within the boundaries of a California balancing authority? Please provide relevant examples.

Response to Question 15:

The location of the eligible renewable energy resource is relevant to whether the eligible renewable energy resource electricity products fall under the §399.16(b)(2) or §399.16(b)(1)(A) category. Section 399.16(b)(2) should only refer to "*shaped*" electricity products generated outside the boundaries of a California BA. Eligible renewable energy resource electricity products generated within the boundaries of a California BA, regardless of the renewable resource being shaped, would already be scheduled into a California BA, therefore making it subject to the §399.16(b)(1)(A) category.

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For example, LADWP previously purchased renewable energy from an energy marketing firm. The source was a biomass generator within the CAISO BA. An energy marketing firm then delivered the energy to LADWP in California on a shaped schedule. In this case, all of the attested energy would effectively count towards the §399.16(b)(1)(A) category, regardless of the specific delivery profile.

i. **Should this section be interpreted as applying only to transactions where the RPS-eligible generation is intermittent? Is the location of the generator within or outside of a California balancing authority area relevant to your response?**

Response to Question 15.i:

This section should **not** be interpreted as applying only to transactions where the RPS-eligible generation is intermittent. As stated above, the location of the eligible renewable energy resource is relevant to whether the resource falls under the §399.16(b)(2) or §399.16(b)(1)(A) category. Section 399.16(b)(2) should only refer to "*shaped*" electricity products generated outside the boundaries of a California BA. Eligible renewable energy resource electricity products generated within the boundaries of a California BA, regardless of the renewable resource being shaped, would already be scheduled into a California BA, therefore making it subject to the §399.16(b)(1)(A) category.

Note that incremental energy could also be used for fixed dispatch (i.e. non-intermittent) renewable energy resources and still count towards the §399.16(b)(1)(A) category. For example, recovery of renewable energy in other hours due to transmission curtailments that interrupted the flow of firm renewable energy into LADWP occur in power system operations, so that the renewable energy resource can be continued to be delivered to the grid and still count towards the §399.16(b)(1)(A) category.

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16) Should the requirement in § 399.16(b)(1)(A) that the generation must be "scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source" be interpreted to mean that no firmed and shaped electricity, as set forth in § 399.16(b)(2), may be considered as meeting the requirements of § 399.16(b)(1)(A)? Please provide relevant examples.

Response to Question 16:

"Firmed *and* shaped" products clearly belong to the portfolio content category described in 399.16(b)(2). However, the use of firming alone does not qualify an electricity product for inclusion in 399.16(b)(2). The statute states that firmed electricity products in fact do meet the requirements of 399.16 (b)(1)(A). The remainder of 399.16 (b)(1)(A), which is omitted in this question, provides that "the use of another source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category." "Real-time" ancillary services include "firming". Therefore firmed eligible renewable energy resource electricity products are not precluded by this portfolio content category. However, 399.16 (b)(1)(A) also states that "only the fraction of the schedule actually generated by the eligible renewable energy resource shall count towards this portfolio content category". Referring back to LADWP's response to Question 7, an example of firmed energy that belongs in this portfolio content category is as follows:

For an eligible renewable energy resource, if 100 MW are scheduled but only 90 MW are actually generated, the 100 MW schedule would have to be firmed up using 10 MW of system power from the balancing authority. In this situation, the 90 MW actually generated by the eligible renewable energy resource would count towards the §399.16 (b)(1)(A)

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category, but the remaining 10 MW of firming system power may not be counted. Please refer to the examples provided in Sec. II.4 of this response.

The main differential criteria applicable to firmed energy being attributed to the category described in §399.16 (b)(1)(A), and the category described in 399.16(b)(2) is whether or not the resource was "shaped". Any shaped eligible renewable energy resource products do not qualify under 399.16 (b)(1)(A), per se.

17) Section 399.16(d) provides that: "Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if [certain] conditions are met. . ."

i. How should the phrase "ownership agreement" be interpreted in this context? Please provide relevant examples.

ii. How should the phrase "count in full" be interpreted? Include consideration of:

1. The requirements in D.07-05-028 (implementing current § 399.14(b)(6) that, in order for procurement from a short-term contract with an existing facility to count for RPS compliance, a minimum quantity of contracts longer than 10 years and/or contracts with new facilities must be signed in the same year as the short-term contract sought to be counted;

2. The requirement in new § 399.13(b) for minimum procurement from contracts of at least 10 years' duration;

3. The restrictions set out in new § 399.13(a)(4)(B) on the use of procurement from contracts of less than 10 years' duration and on procurement meeting the portfolio content of § 399.16(b)(3) in accumulating excess procurement that can be applied to subsequent compliance periods.

Response to Question 17:

Section 399.12 sets forth the definitions of many terms used throughout the article, including Section 399.12(f) defining the term "procure." "Procure" is defined to mean "to acquire through ownership or contract." However, section 399.12 does not introduce the term "ownership agreement," nor does it have a reference to it.

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The legislative intent found in the introduction of the bill states that in addition to establishing renewables portfolio standard procurement requirements it would also "respects the **ownership**, business, and dispatch models for transmission facilities owned by electrical corporations, local publicly owned electric utilities, joint power agencies, and independent transmission companies." Legislative Counsel's Digest, point (9)(emphasis added). This legislative intent is also found in Public Resources Code Section 25740.5 (c), where the program objective is to "increase" renewable electrical generation facilities. One cannot "increase" without respecting existing facilities. The legislative intent coupled with the legislation defining the term "procure" to include "contract" or "ownership," directs a conclusion that the legislature intended to respect existing facilities whether pursued by ownership or contract.

Hence, the phrase "ownership agreement" in section 399.16(d) seems to have been mistakenly used in the place of the defined term "procure," where "procure" includes "ownership" or "contract," but not necessarily an "ownership agreement"- whatever that phrase may mean. Moreover, "procure," as defined to include "ownership," fits in with the legislative intent found in the introduction of the bill and in Public Resources Code Section 25740.5 (c). Therefore, the phrase "ownership agreement" found in section 399.16(d) should be interpreted to mean "procurement" as defined in section 399.12(f).

ii. How should the phrase "count in full" be interpreted?

Response to Question 17.ii:

Based on the above analysis, any ownership or contract executed prior to June 1, 2010 applies to meeting the renewables portfolio standard procurement requirements. However, the statute does not require that facilities meeting the renewables portfolio

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standard with an ownership or contract executed prior to June 1, 2010 meet the portfolio content categories.

The language "shall be procured" for meeting the portfolio content categories found in 399.16(b) is prospective. The use of prospective language continues throughout the portfolio content categories found in 399.16(b)(1) to (3) and 399.16 (c).

The prospective language in 399.16(b) is in direct contrast to the retrospective language found in 399.16(d). In Section 399.16(d)(1) to (2), respectively, the retrospective language includes "was eligible under the rules in place," and "the contract has been approved."

The contrast is also found in section 399.16(d)(3), which discusses an existing facility that may be modified after a certain date, but still does not have to fall within the portfolio content categories as long as any "contract amendments or modifications after June 1, 2010 do not increase the nameplate capacity or expected quantities of annual generation." Presumably, if any contract amendments or modifications did increase the nameplate capacity or expected quantities of annual generation, then the increased eligible renewable energy resource electricity products would have to satisfy the portfolio content categories.

In addition, the "Guiding Principles" for the Request for Comments encourages this conclusion. The fact that existing facilities do not have to meet subsequently created regulations provides for "RPS market certainty." Guiding Principle number 2.

Consequently, based on the contrasting prospective and retrospective language, and the desire for RPS market certainty, eligible renewable energy resource electricity products from facilities existing prior to June 1, 2010 do not fall within portfolio content categories,

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but rather simply meet renewables portfolio standard procurement requirements. Therefore, the language "shall count in full towards the procurement requirements" excludes the requirements of portfolio content categories from facilities existing prior to June 1, 2010.

18) Please discuss the relationship between the instruction in § 399.16(d), set forth above, and the rules for the use of tradable RECs (TRECs) set out in D.10-03-021 (as modified by D.11-01-025), and in D.11-01-026 (for example, temporary limits on TRECs usage; application of the temporary TREC limits to previously signed contracts).

Response to Question 18:

LADWP does not have a comment to this question at this time. However, LADWP reserves the right to respond to the issue of "tradable RECs," during these proceedings.

19) When should the portfolio content limitations set forth in § 399.16(d) go into effect (for example, January 1, 2011; or the effective date of SB 2 (1x); or the date of the Commission decision implementing § 399.16)?

Response to Question 19:

None of the restrictions or conditions set forth in §399.16(b) apply to §399.16(d). Furthermore, LADWP supports CMUA's interpretation that "count in full" means that all generation received under the procurement may be applied towards the utility RPS obligations.

Section 399.16(d) states clearly states that "[a]ny contract or ownership agreement originally executed prior to June 1, 2010, shall count in full…." For example, LADWP adopted an RPS policy on May 23, 2005 and invested on various renewable energy projects (wind, solar, etc.) to accomplish a renewable portfolio of 20% by 2010. These projects were

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eligible by the rules prior to the passage of SB 2 (1X) and SB 2 (1X) was written to acknowledge the early actions pursued by utilities.

24) The First Extraordinary Session of the Legislature is still in session. Because SB 2 (1X) becomes effective 90 days after the end of this special session, the provisions of SB 2 (1X) will not be in effect until mid-October 2011, at the earliest, and the end of 2011, at the latest. Please review your proposals and identify any issues of timing that should be addressed. Should the Commission simply carry forward the existing RPS rules through calendar year 2011? Why or why not?

Response to Question 24:

The provisions of SB 2 (1X) should not be implemented prior to the effective date of the legislation. In order to avoid a convoluted retroactive application of the statute, the CPUC and the CEC should utilize existing RPS rules through the calendar year 2011.

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III. CONCLUSION

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

Dated: August 8, 2011

Respectfully submitted,

By: */s/* Jean-Claude Bertet

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VERIFICATION

I, Randy Howard, am the Director of System Planning and Development representing the Los Angeles Department of Water and Power in this Rulemaking 11-05-005. I declare the following:

1. I am authorized to make this verification on behalf of the Los Angeles Department of Water and Power (LADWP);
2. I prepared and reviewed the *Opening Comments of the Los Angeles Department of Water and Power to the Administrative Law Judge's Ruling Requesting Comments on Implementation of the New Portfolio Content Categories for the Renewables Standard Program.*
3. The matters stated within LADWP's Comments are true and accurate to the best of my knowledge and belief.

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

Executed on this 8th day of August 2011 at Los Angeles, California.

By: */s/* Randy Howard

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