BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:	)	Docket No. 11-RPS-01 and
	)	Docket No. 02-REN-1038
Developing Regulations and Guidelines 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) AND CALIFORNIA PUBLIC UTILITIES COMMISSION JOINT STAFF RENEWABLES PORTFOLIO STANDARD (RPS) WORKING GROUP MEETING

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COMMENTS FROM THE LADWP TO THE CEC AND CALIFORNIA PUBLIC UTILITIES COMMISSION JOINT STAFF RPS WORKING GROUP MEETING

Pursuant to the procedures established by the CEC, the LADWP respectfully submits these comments in response to the CEC and California Public Utilities Commission (CPUC) Joint Staff RPS Working Group meeting held on November 30, 2012.

I. INTRODUCTION

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, pursuant to the Los Angeles City Charter, whose governing structure includes the Mayor, fifteen member City Council, and a five-member Board of Water and Power Commissioners. As the third largest electric utility in the state 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.

As a result of combined regulatory mandates for increased renewable energy, emissions performance standard on fossil fuel generation, energy efficiency, distributed solar, reduction in greenhouse gas emissions, and the elimination of once-through cooling from coastal power plants, LADWP is facing

a utility-wide transformation, and therefore, is making billions of dollars in investments on behalf of its ratepayers to replace about 70 percent of its resources, that it has relied upon for the last 50 years.

California's most recent legislation for its RPS Program requires "each local publicly owned electric utility to procure a minimum quantity of electricity products from eligible renewable energy resources." Since LADWP is a local publicly owned electric utility (POU), it is required to comply with Senate Bill (SB) 2 (1X).

II. COMMENTS

The LADWP would like to take this opportunity to thank CEC and CPUC staff for their outreach efforts in seeking stakeholder comments on various important outstanding RPS issues, such as the appropriate documentation required to categorize resources in their appropriate Portfolio Content Categories (PCC) and reporting of contract information. There are still several outstanding RPS issues that need to be resolved before the conclusion of the first RPS compliance period. The LADWP offers the following comments for consideration by CEC and CPUC staff.

III. COMMENTS

a. Change of Law Effects

A major concern between POUs and project developers (developers) is the inherent risk associated with regulatory uncertainty with the implementation of SB 2 (1X). This regulatory uncertainty is addressed in our power contracts as "Change of Law." Change of Law risks affect all agreements executed for

compliance with California's RPS. Change of Law can significantly impact the net value of projects by either reclassifying the PCCs generated by such project (e.g. PCC 1 Renewable Energy Credit (REC) versus a PCC 3 REC) or changing the date of effective eligibility of the project.

This cost impact is not a speculative risk: it is real. The changing regulatory interpretation by the CEC has already affected several POUs, developers and existing negotiated contracts. Developers constantly point to the Biomethane Moratorium installed in March 29, 2012, which instituted economic impacts on historical decisions and left biomethane contracts in a murky state of eligibility.

A major point of contention between parties in negotiations is whether the developer or the utility should bear the risks associated with Change of Law. Both POUs and developers want their counterparty to bear the risk placing the risk associated with a Change of Law squarely on one another. Negotiation come to a halt and slows down progress towards achieving RPS goals or the Parties enter into a compromise that just adds unnecessary cost directly to our ratepayers.

The CEC needs to recognize that changes to any aspect of the RPS Guidebook or the Regulations (whether they be considered miniscule or not) is a Change of Law and will have a ripple effect on procurement decisions made by POUs, and may impact compliance obligations.

b. Up-Front Portfolio Content Category Verification

There is a general concern that after-the-fact PCC determination by the CEC could cause a contract to be reclassified into a less valuable PCC. Utilities are reluctant to enter into long-term commitments with developers due to the uncertainty that PCC classification for renewable energy from such commitment may change.

In order to alleviate this concern, Iberdrola Renewables, LCC (Iberdrola) requested that the CEC develop an RPS PCC Checklist as part of its RPS Eligibility Guidebook. This checklist should include the basic requirements for each PCC which could then be used as part of an entity's procurement process. Criteria set by the checklist should be developed to the point where entities entering into Power Purchase Agreements (PPA) could do so with the certainty that the project's PCC designation will not change. LADWP supports Iberdrola's PCC checklist proposal.

c. PCC 1 Excess Generation Should Never be Redirected Towards Other PCCs

The CEC has reaffirmed in this workshop that if a utility's actual renewable energy delivery exceeds the scheduled energy delivery, the excess RECs produced will be placed in another PCC. LADWP strongly believes that the excess renewable energy generated should, under no circumstance be applied towards any other category except PCC1, as this energy would still be bundled and meet the definition of a PCC1 resource.

The number of times a renewable energy resource over-generates above its schedule is frequent because; most generation output from renewable energy

resources, especially wind farms, are intermittent[1]. As such, their output cannot accurately be predicted to match-up with their schedule. Most PPAs were not negotiated and executed on the premise that the actual generation output is what meets PCC 1 requirements and not the scheduled amount.

If, by default, such over-generated RECs are placed in PCC 3, premature saturation of PCC3 can occur before the end of the compliance period. PCC 3 is essentially a "contingency" bucket where utilities can make-up shortfalls and prevent enforcement actions. At the same time that PCC 3 is saturated, utilities would equally be burdened to meet PCC1 obligation by either over scheduling from the resources or procuring more energy than is actually needed. The CEC's current proposal on this issue would potentially saturate PCC 3 and constrain such flexibility.

Therefore, the LADWP requests that the CEC classify PCC 1 RECs generated over the delivery schedule to remain classified as PCC 1, as these excess RECs would still meet the interconnection (or dynamic) and bundled product requirements of PCC 1.

d. Inadvertent Influence on the Energy Market

At the workshop, CEC staff implied that substitute energy procured for PCC 2 must originate from outside of California. The LADWP cannot find legislative language or sensible justification for this arrangement.

The energy market thrives on economic decisions; contracted substitute energy providers (SEP) will likely replace RPS-Eligible energy with a cost-

[1] The anticipated generation output from the resource is communicated about an hour or two before actual generation between Purchasing Selling Entities (PSE) and/or Balancing Authorities as a way of maintaining bulk power system integrity.

effective product. As such, if substitute energy originating from California is cheaper than substitute energy procured from out-of-state, the SEP will procure the California-sourced energy and deliver it to the designated point of delivery (POD). Existing contractual obligations for many utilities do not specify the source for the substitute energy should come from.

Currently, as interpreted by CEC staff, by limiting substitute energy to originate from outside of California, CEC may inadvertently influence the energy market by earmarking out-of-state substitute energy as the PCC 2-compliant energy. Furthermore, given that this interpretation is being introduced to POUs mid-way through the compliance period, it effectively introduces a new Change of Law, which will hinder existing and future PCC 2 procurement.

The LADWP requests that the CEC remove this artificial interpretation, as there is no legislative language or sensible justification for this arrangement and negatively affects market activity.

e. Firmed and Shaped Contracts 12-Month Requirement

The current CEC staff interpretation for PCC 2 reporting is that such energy needs to be scheduled into a California Balancing Authority (BA) in the same calendar year as the renewable energy is generated. Currently, as we have previously stated, this requirement is operationally infeasible. Several firming and shaping entities perform renewable energy true-up in about a month or two (or even more) after actual generation. For example, true-ups for December energy occur in January and February of the following year, which would conflict with the CEC's preliminary expectation. Moreover, SB 2 (1X) did

not allude to or establish timeframe requirement for firming and shaping transactions.

In order to account for these existing needed operational requirements, the LADWP recommends that the CEC reconsider a "rolling 12-month" approach, where a POU would be required to schedule substitute energy within 12 months from the date the electricity is generated.

f. Compliance Period End-Balancing Requirement

As stated in the workshop, the current CEC interpretation of the verification of compliance period deference is that a utility is not allowed to make-up shortcomings at the beginning of the following compliance period.

The reality is that most renewable energy resources are intermittent and therefore the generation from such resources cannot be accurately predicted. As such, utilities will not be able to determine whether they are short on RPS-eligible procurement until the end of a compliance period. If shortfalls are discovered, a utility requires additional time to make the additional necessary procurements to ensure compliance with the RPS targets and PCC requirements. Preclusion of this method would default utilities into non-compliance. As a result, LADWP requests that the CEC allow a grace period of at least 90 days after the end of a compliance period in order for utilities to procure the necessary resources to be RPS-compliant for the previous compliance period.

g. REC Expiration Date is 36 Months

LADWP is deeply concerned at the CEC staff's current interpretation of REC retirement periods. At the workshop, the CEC stated that a REC must be

retired within the compliance period it is generated. SB 2 (1X) Section 399.21 (a)(6) states that:

> Section 399.21 (a)(6): *A renewable energy credit shall not be eligible for compliance with a renewables portfolio standard procurement requirement unless it is retired in the tracking system established pursuant to subdivision (c) of Section 399.25 by the retail seller or local publicly owned electric utility within 36 months from the initial date of generation of the associated electricity.*

There are no restrictions listed in SB 2 (1X) which would preclude the use of RECs in other compliance periods. Furthermore, this interpretation comes into conflict with a governing boards' discretion over the treatment of excess procurement:

> Section 399.30: (d) The governing board of a local publicly owned electric utility may adopt the following measures:
> (1) Rules permitting the utility to apply excess procurement in one compliance period to subsequent compliance periods in the same manner as allowed for retail sellers pursuant to Section 399.13.

Therefore, LADWP requests that the CEC remove the REC retirement restriction, as such restriction comes in conflict with state law.

h. Western Renewable Energy Generation Information System (WREGIS) and North American Electric Reliability Corporation (NERC) E-Tag Concerns

i. RPS ID in NERC e-Tag Requirement

As of November 2012, the CEC had requested that POUs input the RPS ID in the "Miscellaneous" field of associated NERC e-Tag in order for the e-Tag data to be pulled into WREGIS and later matched with the WREGIS REC amounts. LADWP, through its existing PPAs, depends on several contracted entities to fulfill this e-Tagging obligation on its behalf for renewable generation schedules. As a result of these PPAs going into effect before the CEC came up

with this requirement, no contractual obligations were made to include this provision into the agreements. LADWP is concerned that if such entity does not properly or forgets to put the RPS ID in an e-Tag, then discrepancies between WREGIS-reported data and the e-Tag information will be unavoidable.

In order to ensure that all contractors that LADWP depends on for RPS compliance is in par with this new requirement, the LADWP requests that the CEC considers a transition period it can phase this requirement into effect from the official announcement date.

ii. Generation Imbalance not Considered

LADWP is concerned that the current structure of WREGIS does not account for generation imbalances produced in NERC e-Tags. WREGIS considers the metered generation data while NERC e-Tags are based on whole Mega watt per hour (MWh) values with truncation and carry-forward of fractional MWh until a whole MWh is achieved and then posted into the next hour ahead. For example, let's suppose the actual generation output for a northwest wind farm is 12.4 MWh, the metered data reported to WREGIS would account for all 12.4 MWh while the NERC e-Tag would account for 12 MWh over that hour. The 0.4 MWh of generation would be accounted for as an Energy Imbalance and absorbed as part of a Control Area Service furnished by a BA. As such, CEC would observe the 0.4 MWh as a discrepancy between the WREGIS and e-Tag report, reaffirming that e-Tag reported information is not fully dependable.

The CEC needs to recognize that energy imbalancing is a standard industry practice and is not accounted for in NERC e-Tag data. As such, the CEC should not utilize e-Tag information to fully substantiate compliance with the RPS.

iii. E-tags not Provided for Energy Generated and Consumed Within a BA

The LADWP wants to ensure that the CEC recognizes that not all renewable generation can be tracked using NERC e-tags. For example, the Pine Tree Wind Farm is directly interconnected into LADWP's BA. The energy generated from this facility is directly consumed within the LADWP BA. There are no e-Tags produced since the energy is generated and consumed within the same BA. In these instances, the CEC cannot depend on e-Tag information to substantiate compliance, as there are no e-Tags that are provided in the process.

i. Verification Process Must Include a Reconciliation Period

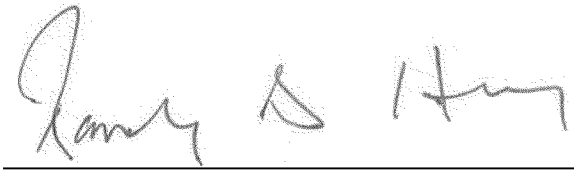
LADWP requests that the Energy Commission develops a process by which a utility can review CEC data, make comparisons to its own data, and rectify and explain any potential discrepancies prior to the CEC making any final determinations with respect to determining a failure to comply. As currently written, a difference in calculations could potentially result in a perceived violation going back four years, with no opportunity for a utility to correct the deficiency. Without such a process, compliance with this policy will be inconsistent with other regulatory mandates, such as those in the environmental and reliability fields, wherein the regulated party has the opportunity to respond and correct the deficiency before receiving a violation and/or penalty.

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. We respectfully request that the CEC take into consideration LADWP's recommendations, as they are aimed to not only simplify the CEC's efforts in this RPS proceeding, but also conform with the intended outcome of SB 2 (1X). LADWP appreciates the opportunity to comment on this important proceeding and looks forward to working with the Energy Commission on these RPS matters.

Dated December 12, 2012

Respectfully Submitted,

By: 

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