BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

COMMENTS OF THE LOS ANGELES DEPARTMENT OF WATER AND POWER TO THE ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON NEW PROCUREMENT TARGETS AND CERTAIN COMPLIANCE REQUIREMENTS 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 New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program* (Request for Comments), dated July 15, 2011, the Los Angeles Department of Water and Power (LADWP) respectfully submits these 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 residents 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 supports renewable energy development to serve its long-term sustainability and resource goals. LADWP transitioned from approximately 3% renewable energy content on 2003 to 20% renewables in 2010.

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 California Renewables Portfolio Standard Program [1](RPS) goals of 33% by 2020 as currently mandated by state law, and the reliable integration of increasing amounts of renewable resources. The LADWP's foremost priorities are to protect its ratepayers from unnecessary rate impacts and ensure the continuous reliable operation of its electric grid.

LADWP emphasizes that Section 399.30 (p) clearly recognizes the local governing boards 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 (POUs).[2] Nevertheless, LADWP provides these comments to the CPUC because discussions in this proceeding may impact decisions to be made by the California Energy Commission (CEC) and POU governing boards.

II. COMMENTS

SB 2 (1X) requires "each local publicly owned electric utility [to] adopt and implement a renewable energy resource procurement plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources."[3] Since LADWP is a local publicly owned electric utility, it is required to comply with SB 2 (1X).

LADWP's responses focus on those questions that might affect its customers and procurement plans. Therefore, below are LADWP's responses to 5 of the 19 questions issued in the Request for Comments.

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[1] Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code.
[2] All code section references are to the Public Utilities Code, unless otherwise specified.
[3] SB 2 (1X) §399.30 (a)

Question 2: New § 399.15(b) establishes new RPS compliance targets and provides instructions to the Commission about implementing them. (A copy of new § 399.15(b) is attached as Attachment A.)

New § 399.15(b)(2)(B) states that "for the compliance period from January 1, 2011, to December 31, 2013, inclusive, the commission shall require procurement for each retail seller equal to an average of 20 percent of retail sales. For the following compliance periods, the quantities shall reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020…"

- ***Should compliance targets for intervening years in the 2011-2013 compliance period be set as:***
    - ***20% of retail sales for the year ending December 31, 2011;***
    - ***20% of retail sales for the year ending December 31, 2012; ending with***
    - ***20% of retail sales for the year ending December 31, 2013, such that the RPS obligation (compliance period quantity) of a retail seller for the 2011-2013 compliance period would equal in megawatt-hours (MWh): (.20 x 2011 retail sales) + (.20 x 2012 retail sales) + (.20 x 2013 retail sales)?***
- ***Should different compliance targets for intervening years be set for this period? Why or why not?***

Should no compliance targets for intervening years be set for this period? Why or why not?

For the compliance period 2014-2016 and 2017-2020, the Commission is required to set compliance period quantities that "reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2015, and 33 percent of retail sales by December 31, 2020."

- ***Should targets for intervening years in the 2014-2016 compliance period be set using a linear trend:***
    - ***21.5% of retail sales by December 31, 2014;***
    - ***23.5% of retail sales by December 31, 2015; ending with***
    - ***25% of retail sales by December 31, 2016, such that the compliance period quantity for the 2014-2016 compliance period would equal in MWh: (.215 x 2014 retail sales) + (.235 x 2015 retail sales) + (.25 x 2016 retail sales)?***
- ***Should targets for intervening years in the 2017-2020 be set using a linear trend:***
    - ***27% of retail sales by December 31, 2017;***
    - ***29% of retail sales by December 31, 2018;***
    - ***31% of retail sales by December 31, 2019; ending with***
    - ***33% of retail sales by December 31, 2020, and thereafter, such that the compliance period quantity for the 2017-2020 compliance period would equal in MWh: (.27 x 2017 retail sales) + (.29 x 2018 retail sales) + (.31 x 2019 retail sales) + (.33 x 2020 retail sales)?***

Should different targets for intervening years be set for either of these compliance periods? Why or why not?

New section 399.15(b)(2)(C) provides that "[r]etail sellers shall be obligated to procure no less than the quantities associated with all intervening years by the end of each compliance period. Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year."

What are the consequences, if any, of a retail seller attaining the target in the final year of the compliance period (e.g., 25% of retail sales in 2016), but failing to procure "the quantities associated with all intervening years" by the end of that compliance period?

Response to Question 2:

The LADWP disagrees with the interpretation that Section 399.15(b) requires the Commission to establish intermediate, enforceable, RPS targets beyond those intended by the Legislature. In fact, Section 399.15 (b)(2)(C) clearly states that a "retail seller shall not be required to demonstrate a specific quantity of procurement for any individual year." The LADWP finds that the language of Section 399.15 (b)(2)(C) precludes the Commission or other enforcement entities from setting enforceable RPS targets for the intervening years of the compliance periods.

This interpretation is consistent when looking at the Legislature's use of the term "reasonable progress" in Sections 399.15(b) for Investor Owned Utilities (IOU) and 399.30(c) for POUs. Looking at those subsections as a whole, the other times the Legislature uses the term "reasonable" is in the waiver provisions found in subsections 399.15(b)(5) through 399.15(b)(7). The terms "reasonable measures," "reasonableness," and "reasonable actions" are used to provide the CPUC and POU governing boards in 399.30(d) via reference to the waiver provisions, with wide latitude to assess a utility's specific situation. [4]

In addition, the question posed by the CPUC limits the phrase "reasonable progress" to the actual measured output of electricity. Attempting to limit the word "reasonable" will thwart

[4] PUC §§ 399.15(b)(5)(A)(i)-(ii), 399.15(b)(5)(B)(iv), 399.15(b)(6)-(7).

the Legislative intent and attempt to confine the CPUC. With using the term "reasonable progress" the Legislature intended utilities to be diligent in pursuing the targets for the compliance periods, but avoided defining how to measure their pursuit. There are various strategies for pursuing the compliance periods, including contracting for eligible renewable energy resources *or* owning them. The Legislature specifically recognized these two strategies when it defined the term "procure" to mean "acquire through *ownership or contract*.[5]"

The phrase "procurement of electricity products" as used in Sections 399.15(b) and 399.30(c) shows that when speaking of "reasonable progress" ownership and contracting may have very different facts to show progress. For example, in the "ownership" context, reasonable progress may include developing an Environmental Impact Report under the California Environmental Quality Act (CEQA), a potentially multi-year process. In the "contracting" context, reasonable progress may include issuing a request for proposals (RFP), also a potentially multi-year process. Either of these could include transmission interconnection studies and agreements or transmission planning studies that assist in project development.

These strategies are further identified in Section 399.13, including subsection (a)(3), when "retail sellers" are directed to submit their "compliance reports" to show their "progress." The "renewable energy procurement plan" may include the status of "permitting approvals from federal, state, and local agencies" and "bid solicitation."[6]

Both strategies ultimately help the respective utility meet its compliance period targets, but employs different means for attaining them. Therefore, the phrase "reasonable progress" should be interpreted very broadly to achieve the Legislature's goals for the compliance periods

[5] PUC §399.12(f)(emphasis added).
[6] PUC §§ 399.13(a)(3)(A) and 399.13(a)(5)(C), respectively.

while affording the Commission and utilities with flexibility to assess and employ various strategies to achieve those goals.

Question 7: New § 399.13 (a)(4)(B) requires the Commission to adopt new rules for the calculation and management of RPS procurement that is in excess of the requirements for a given compliance period ("banking"). This new section provides that the Commission must adopt:

[r]ules permitting retail sellers to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period. The rules shall apply equally to all retail sellers. In determining the quantity of excess procurement for the applicable compliance period, the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration. In no event shall electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 be counted as excess procurement.

New § 399.15 (b) sets out three metrics for procurement requirements in a compliance period:

- ***For the 2011-2013 compliance period, attaining an average of 20% of retail sales in that period.***
- ***For the 2014-2016 and 2017-2020 compliance periods, attaining a target of a percentage of retail sales by the end of the compliance period (25% by December 31, 2016 and 33% by December 31, 2020).***
- ***For all compliance periods, procuring no less than the quantities associated with all intervening years by the end of the compliance period.***
  - ***Please propose a method of calculating any excess procurement that may be carried over from the 2011-2013 compliance period to the 2014-2016 compliance period. Please provide a sample calculation.***
  - ***Should the method you propose also be used for calculating any excess procurement that may be carried over from the 2014-2016 compliance period to the 2017-2020 compliance period? If not, please propose another method. Please provide a sample calculation for your method.***

Please discuss the relationship of the method(s) you propose to your response to #2, above, relating to the calculation of RPS procurement obligations for compliance year 2011 and future years pursuant to new § 399.15 (b).

Response to Question 7:

Section 399.30 (d)(1) states that the governing board of a local publicly-owned utility may adopt "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." Consequently, the rules developed by the Commission under Section 399.13

(a)(4)(B) may be seen as establishing a precedent for POU governing boards with respect to "Banking" under the RPS.

Provisions for banking and carrying forward excess procurement from one compliance period to future compliance periods is appropriate. Such provisions provide benefits in an uncertain market by mitigating weather based volatility, price fluctuations and generally relieving market pressure. Banking provisions are necessary to also support the "chunky" nature of developing and start-up of larger renewable projects that support the long-term requirements.

The terms of banking provisions are obviously highly dependent on the definition of "compliance period" and "reasonable progress." As stated above in our comment to question 2, the Legislature avoided interim targets in favor of providing the Commission and utilities with flexibility to assess and employ ownership and contracting strategies to achieve the compliance period targets.

However, focusing only on Section 399.13 (a)(4)(B), providing that the "Commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than *10 years in duration,*" penalizes the ownership strategy. The focus on the term of years for the contracting strategy excludes the possibility of providing for excess procurement if an ownership strategy is employed. This penalty could not have been the Legislature's intent. One strategy should not be emphasized over another.

Question 15: New section 399.31 provides for the procurement of RECs for RPS compliance from local publicly owned utilities (POUs) by retail sellers, under certain conditions. It provides:

- ***A retail seller may procure renewable energy credits associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility, for purposes of compliance with the renewables portfolio standard requirements, if both of the following conditions are met:***

- ***The local publicly owned electric utility has adopted and implemented a renewable energy resources procurement plan that complies with the renewables portfolio standard adopted pursuant to Section 399.30.***
- ***The local publicly owned electric utility is procuring sufficient eligible renewable energy resources to satisfy the target standard, and will not fail to satisfy the target standard in the event that the renewable energy credit is sold to the retail seller.***

- ***What documentation should the Commission require from IOUs to demonstrate that the selling POU is in compliance with new §399.31 (a)?***
- ***What documentation should the Commission require from ESPs? From CCAs?***
- ***What documentation should the Commission require from IOUs to demonstrate that the selling POU is in compliance with new §399.31 (b)?***
- ***What documentation should the Commission require from ESPs? From CCAs?***

In view of the CEC's oversight of POUs' compliance with RPS requirements under SB 2 (1X), how should this Commission coordinate with the CEC to administer and verify your proposed system of documentation?

Response to Question 15:

The need for additional documentation to demonstrate adherence to Section 399.31 is unnecessary. The only qualifiers necessary are: 1) the POU has adopted and implemented a renewable energy resource procurement plan, and 2) the POU is procuring sufficient eligible renewable energy resources to satisfy the target standard. This appears to be legacy language from a time when IOUs and POUs were operating under potentially different RPS eligibility rules.

It is implied within this question that the IOUs may be responsible for providing verification to the Commission that the POU from which the Renewable Energy Credits (RECs) are purchased meet the requirements of this section. Certainly the IOUs are not in a position to, nor would even desire to, make a declaration with respect to a POU's RPS compliance under Sections 399.30 or 399.31.

Furthermore, it is not clear that the Commission is required to, or indeed has the authority to, make any independent verification of either of the two conditions in Section 399.31.

Determining whether or not a POU has adopted and implemented a RPS procurement plan and if a POU is, or will be, in compliance with RPS targets are outside the jurisdiction of the Commission. The need for additional documentation under Section 399.31 to deem that a POU is not only in compliance with Section 399.30, but "procuring sufficient eligible renewable energy resources to satisfy the target standard," and prognosticate that a POU "will not fail to satisfy the target standard" will unnecessarily complicate the purchase of RECs.

Attempting to place the burden of Section 399.31 qualifiers directly on the IOUs creates significant barriers to the real-time trading of RECs in the marketplace. The Legislature did not contemplate the creation of a separate class of RECs for POUs: A REC is a REC and a facility that generates RECs will have to be certified by the CEC and be tracked through the Western Renewable Energy Generation Information System (WREGIS). POU's not complying with either the procurement plan or meeting the renewable energy resource standard will be in violation of the RPS and subject to appropriate enforcement as determined by the CEC.[7]

Careful consideration and coordination between the Commission and CEC is required to ensure that market congestion is not artificially created as a result of the interpretation of Section 399.31. A situation could be created whereby the POU could agree to sell, and the IOU would agree to buy RECs, but the transaction could not take place until the CEC has verified that the conditions of Section 399.31 are met. Such a delay of even the simplest REC transactions would serve essentially to prohibit the trading of RECs between IOUs and POUs.

POUs will be providing annual reports to the CEC which demonstrates compliance with the relevant provisions of SB 2 (1X). The CPUC could coordinate with the CEC to check if the POU satisfies Section 399.31 (a) and (b) to verify the validity of IOU purchases of RECs from POUs. No additional documentation should be required from individual market participants

[7] PUC §399.30(o).

Question 16: In D.03-06-071 and D.03-12-065, the Commission set the basic parameters for enforcement of RPS obligations. Among other things, the Commission set a penalty amount for retail sellers failing to meet their annual RPS obligations at $0.05/kilowatt-hour (kWh) for each kWh below the annual procurement target, with an annual cap of $25,000,000. New § 399.15 (b)(2) institutes two three-year compliance periods and one four-year compliance period. New §399.15 (b)(1)(C) specifies that retail sellers "shall not be required to demonstrate a specific quantity of procurement for any individual intervening year."

- ***To what obligation should a penalty apply?***
  - ***the goal at the end of each compliance period (i.e., average of 20% for 2011-2013; 25% by the end of 2016; 33% by the end of 2020);***
  - ***the compliance period quantity for a particular compliance period;***
  - ***both of the above;***
  - ***another metric or quantity. Please set out the proposal in detail and explain its basis.***
- ***Should the penalty amount of $0.05/kWh be changed? If so, what method should be used to set a new penalty amount?***
- ***For compliance periods beginning in 2011, should a penalty cap be in place?***
- ***If a penalty cap is imposed, should it cover an entire compliance period?***

What method should be used to set a new penalty cap under SB 2 (1X)?

Response to Question 16:

The LADWP has no desire or intention to influence RPS enforcement policies or decisions made by the Commission applicable to the IOUs. Section 399.30 (p) states that the "[c]ommission has no authority or jurisdiction to enforce any of the requirements" of the RPS[8] over a POU.

Only after the CEC has determined that a POU has failed to comply with the RPS does it refer it to the California Air Resources Board (CARB) for a potential penalty assessment.[9] Furthermore, Sections 399.30 (n) and 399.30 (o) give exclusive jurisdiction to the CARB, "which may impose penalties to enforce" the RPS. This does not say that any and all violations of the RPS must result in a financial penalty. The goal is to enforce the RPS.

In addition, Section 399.30 (o) states that "[a]ny penalties imposed [by CARB] shall be comparable to those adopted by the commission for noncompliance by retail sellers." Therefore,

[8] Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code, also as referenced above in the Introduction.
[9] PUC §399.30(o).

due to this potential link between the Commission's penalty provisions for IOUs and CARB's provisions for POU's, the LADWP offers the following suggested guiding principles for penalty calculations under the RPS program:

- Penalties should apply only to end of compliance periods
- A grace period for correcting technical violations should be established.
- Alternative and flexible compliance mechanisms rather than direct financial penalties are appropriate.
- Proposed penalties should be commensurate with the severity of the infraction.
- Penalty formulations must be consistent, progressive, predictable, and fair for the various types of violations (e.g. late reports, §399.16 (b)(1) criteria, failure to achieve RPS compliance period targets, etc.)
- Violations and proposed penalties should not be retroactive prior to the adoption of regulations developed pursuant to SB 2 (1X).
- Penalty caps should be established for each type of violation.
- A utility cannot be penalized for the same infraction under more than one provision of State Law.
- A formal appeal process should be established

Setting an annual penalty amount is unwarranted and is not supported by the statute as noted on the response to Question 2. Penalties should be applied only to the end of the compliance periods (i.e. at the end of 2013, 2016 and 2020). Also, penalties should be waived when compliance is delayed in accordance with rules established pursuant to Section 399.15 (b)(5).

Question 18: Please discuss any issues related to the verification by the CEC of any elements of any proposal you have made, above. Please include discussion of the use of the WREGIS. Please provide specific mechanisms and examples.

Response to Question 18:

The WREGIS is an impartial third party utilized to tabulate and track RECs. The main issue related to the verification by the CEC is that the WREGIS does not sort, arrange or place RECs into the appropriate portfolio content categories set by Section 399.16 (b)(1). There still needs to be a framework that will serve as an accounting mechanism for placing RECs into their respective portfolio content categories that works in conjunction with the WREGIS.

III. CONCLUSION

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

Dated: August 30, 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 *Administrative Law Judge's Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio 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 30th day of August 2011 at Los Angeles, California.

By: /s/ Randy Howard

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