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**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

December 17, 2013

Agenda ID #12657

**TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-298:**

This is the proposed Resolution of Administrative Law Judge (ALJ) Darwin E. Farrar regarding appeal of citation for violation of Resource Adequacy Reporting Requirements. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You may serve comments on the draft resolution. Opening comments shall be served no later than January 6, 2014, and reply comments shall be served no later than January 13, 2014. Service is required on all persons on the attached service list. Comments shall be served consistent with the requirements of Pub. Util. Code § 311(g) and Rule 14.5 of the Rules of Practice and Procedure.

Finally, comments must be served separately on ALJ Farrar at [edf@cpuc.ca.gov](mailto:edf@cpuc.ca.gov), and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ KAREN V. CLOPTON

Karen V. Clopton, Chief  
Administrative Law Judge

KVC:gd2

Attachment

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ-298  
Administrative Law Judge Division  
January 16, 2014

**RESOLUTION**

RESOLUTION ALJ-298. Affirming the Penalty Assessed Against 3 Phases Renewables in Citation E-4195 as Modified by Decision 11-06-022.

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**SUMMARY**

Energy Division issued Citation E-4195-21 to 3 Phases Renewables (3 Phases) on July 16, 2013, charging 3 Phases with failing to file the Month-Ahead System Resource Adequacy (RA) compliance filing at the time and in the manner required. Specifically, though 3 Phases' compliance filing was timely, only 14.32 Megawatts (MW) of 3 Phases' 15 MW July RA obligation was confirmed by the California Independent System Operator. 3 Phases was fined \$1,000 for being short .68 MW (4.5% of its monthly obligation), and \$500 per day for each day between the filing and notification of the violation.

**DISCUSSION**

Resolution E-4195 modified the California Public Utilities Commission (Commission) citation program for enforcing compliance with system and local Resource Adequacy (RA) filing requirements by transferring authority to draft and issue citations from the Commission's Energy Division (ED) to Commission Staff as a whole, broadening the scope of the prior resolution to encompass all Load Serving entities that are potentially subject to RA obligations, and adding a specified violation for failure to meet RA obligations where there is a small procurement deficiency.<sup>1</sup>

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<sup>1</sup> A small procurement deficiency is defined as procuring resources that are less than the load serving entities' RA requirement by no more than one percent and not exceeding 5 MW, or less than 5 MW and less than or equal to 1 MW.

The delinquency notice issued by ED on June 7, 2012 required 3 Phases to procure an additional .68 MW of capacity and resubmit its filing by June 14, 2012. 3 Phases claims it worked diligently to acquire the additional .68 MW but was unable to do so until June 20, 2012, five days after the deadline, at which time it resubmitted its filing. 3 Phases was fined \$1,000 for missing the deadline and \$500 for each of the five days between the deadline and the resubmitted filing. As a result of these events 3 Phases was fined a total of \$7,000.

3 Phases timely appealed the citation by notice of appeal dated August 5, 2013. A hearing on the appeal was held by Administrative Law Judge, Darwin E. Farrar on November 7, 2013.

Rather than challenge the lawfulness of the fines, 3 Phases claims that the deficiency resulted from its having erroneously used the agreed upon contract amount (3 MW) of capacity rather than the California Independent System Operator's (CAISO) Net Qualifying Capacity (2.32 MW) for a vendor in its calculations, and argues that the fines are excessive given the small size of the error and totality of circumstances. Specifically, 3 Phases argues that because its initial mistake was inadvertent and it acted diligently to correct the error, it should not be fined \$7,000 for being deficient .68 MW. Moreover, 3 Phases asserts that the fines for the days between its filing and ED's delinquency notice, and the five days beyond the June 14, 2012 deadline that it took to procure the additional .68 MW are arbitrary and capricious because the first deadline was not within its control, and it was nigh impossible to comply with the second deadline. Specifically, with regard to the fines for the five days between its filing and ED's delinquency notice, 3 Phases argues that had the Commission informed it of the violation sooner the amount of the fine would be less. With regard to the five days beyond the June 14, 2012 deadline that it took to procure the additional .68 MW, in light of its having contacted several sources to no avail, including the CAISO and ED, 3 Phases argues that the time afforded it was arbitrary and capricious because the deadline did not take into account the then prevailing market conditions.<sup>2</sup>

3 Phases' first argument is without merit as 3 Phases has presented nothing to show that the time between its defective filing and the delinquency notice is unusual, excessive, or contrary to law. 3 Phases' second argument that the time afforded it was arbitrary and capricious because ED's deadline did not take into account the then-prevailing market conditions, while more tenable, and is also flawed. As an initial matter we note that while 3 Phases establishes that it made commendable efforts to procure additional MW, it appears that 3 Phases never requested an extension of the June 14, 2012 deadline. Moreover, where 3 Phases was given a week to procure

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<sup>2</sup> By email dated November 11, 2013, 3 Phases provided documentation of its efforts to procure additional MW and to keep the Commission and CAISO staff apprised of the situation.

additional MW, Resolution E-4195 allows for immediate fines in the amount of "\$1,000 per incident plus \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter." Thus, 3 Phases could have been fined for every day that it was out of compliance, including the time between the June 7, 2012 delinquency notice and June 14, 2012. Since Resolution E-4195 does not require a grace period we do not find the time afforded 3 Phases to procure additional MW to be arbitrary and capricious regardless of whether ED took the prevailing market conditions into account.

Therefore, this resolution affirms the citation and the penalty amount.

### **COMMENTS**

The Resolution was issued for public review and comment in accordance with Public Utilities Code Section 311, Subdivision (g). \_\_\_\_\_ comments were received.

### **FINDINGS**

1. 3 Phases' July 2012 Month-Ahead Resource Adequacy Compliance Filing was made on May 31, 2012.
2. Only 14.32 MW of 3 Phases' 15 MW July RA obligation was confirmed by CAISO. 3 Phases was therefore deficient .68 MW.
3. 3 Phases deficiency resulted from its having erroneously used the agreed upon contract amount (3 MW) of capacity rather than the CAISO's Net Qualifying Capacity (2.32 MW) for a vendor in its calculations.
4. On June 7, 2012, ED sent a deficiency notice to 3 Phases identifying the deficiency and requiring it to procure an additional .68 MW of capacity by close of business on June 14, 2012.
5. 3 Phases cured the deficiency and submitted its revised filing on June 20, 2012.

### **CONCLUSIONS OF LAW**

1. 3 Phases' .68 MW deficiency rendered its otherwise timely filing non-compliant.
2. 3 Phases' non-compliant July 2012 Month-Ahead Resource Adequacy Compliance Filing constitutes a Specified Violation under Resolution E-4195.
3. Fines under Resolution E-4195 need not take market conditions into account.

3. Under the present factual circumstances, the citation should be affirmed.

**THEREFORE, IT IS RESOLVED** that:

1. Citation E-4195-21 is affirmed.
2. The appeal process for this citation is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on \_\_\_\_\_, the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director

**INFORMATION REGARDING SERVICE**

I have provided notification of the foregoing Draft Resolution ALJ-298 to the electronic mail addresses on the attached service lists. I have served a hard copy of the foregoing Draft Resolution ALJ-298 by U.S. mail on those persons on the attached service lists that do not have e-mail addresses.

Dated December 17, 2013, at San Francisco, California.

/s/ GLADYS M. DINGLASAN  
Gladys M. Dinglasan

**SERVICE LIST**

**APPEAL OF CITATION NUMBER E-4195-21**

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