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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #8670
RESOLUTION E-4257
July 30, 2009

R E S O L U T I O N

Resolution E-4257. **PROPOSED OUTCOME:** This Resolution initiates a citation program authorizing Commission Staff to penalize load serving entities (LSEs) for non-compliance with mandatory filing deadlines and reporting requirements of the Renewables Portfolio Standard (RPS). **ESTIMATED COST:** None.

This Resolution is made on the Commission's own motion.

SUMMARY

This Resolution approves a citation program under the administration of Commission Staff (Staff) to enforce compliance with RPS reporting requirements. Approval of the citation program will create penalties for non-compliance with the Commission's requirements for submission of RPS Compliance Reports and non-responsiveness to requests for information by Staff related to the implementation and administration of the RPS program.

The citation program applies to load serving entities (LSEs) subject to the Commission's RPS reporting requirements. Staff will be delegated authority to draft and issue citations for specific violations as set forth in Appendix A. Penalties may be levied for failure to submit a compliance report at the time or manner required, or failure to provide information to Staff at the time or manner required. Nothing in this Resolution diminishes, alters, or reduces the Commission's existing authority to implement and administer the RPS program.

BACKGROUND

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107 and SB 1036¹. The RPS program is codified in Public Utilities (PU) Code Section 399.11, et seq. An RPS policy generally requires that a retail seller of electricity purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). Under the California RPS, an obligated LSE is required to increase its total procurement of ERRs by at least 1% of annual retail sales per year so that 20% of its retail sales are supplied by ERRs by 2010.

The legislation directs the Commission and the California Energy Commission (CEC) to jointly implement and administer the RPS Program. Commission implementation includes setting procurement targets and enforcing compliance with those targets. LSEs must periodically report progress in achieving those targets. Decision (D.) 05-07-039 established a schedule for RPS compliance reports (Routine RPS Compliance Reports) to be filed on March 1st and August 1st of each year, with the opportunity to supplement or amend the March filing by May 1st of that year.²

The CEC is responsible for verifying RPS procurement claims. The CEC describes its findings of those claims in an RPS procurement verification report.³ Pursuant to D.06-10-050, within 30 days after the CEC adopts an RPS procurement verification report, LSEs must file RPS compliance reports that use the CEC verified data (Verified RPS Compliance Reports). The Commission then uses the Verified RPS Compliance Reports to make a determination of compliance with the RPS program.

¹ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007)

² Ordering Paragraph (OP) 17

³ For example, see RENEWABLES PORTFOLIO STANDARD 2005 PROCUREMENT VERIFICATION Report <http://www.energy.ca.gov/2007publications/CEC-300-2007-001/CEC-300-2007-001-CMF.PDF>

In addition to the Routine RPS Compliance Reports and Verified RPS Compliance Reports, the large investor owned utilities (IOUs)⁴ are required to file Project Development Status Reports on March 1st and August 1st each year.⁵ This additional reporting requirement was established in lieu of adopting margin of safety targets for the IOUs.⁶

Each verified and routine compliance report is filed with Energy Division and served on the service list for Rulemaking (R.) 08-08-009 or its successor proceeding.

DISCUSSION

PU Code Section 399.14(e) authorizes the Commission to enforce compliance with the RPS. Public utilities are subject to enforcement action and penalties pursuant to PU Code Sections 2102-2015, 2017, 2108, and 2114. Electric service providers are subject to enforcement action pursuant to these same code sections as if they were public utilities.⁷ Community choice aggregators are subject to enforcement action pursuant to Section 2111.

A citation program will encourage complete and timely filings of RPS compliance reports. It will also encourage complete and timely responses to requests for information from Commission Staff that are related to the implementation and administration of the RPS.

In its administration of the RPS program, Energy Division has made itself available to LSEs to ensure complete and timely RPS filings. Specifically, Energy Division staff has been available to answer questions and review reports prior to filing to ensure they are correct and complete. Requests for an extension to file

⁴ Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company.

⁵ D.06-10-039, page 23.

⁶ The Commission considered establishing an incremental procurement target greater than the 1% increment required by statute to create a margin of safety toward meeting the 2010 RPS goal of 20%, thereby planning against various risks, including project or contract failure.

⁷ PU Code Section 394.25.

have been requested and granted. Despite this, LSEs continue to file late, incomplete, or incorrect reports.

Most recently, Energy Division staff conducted a thorough review of the March 2009 Routine RPS Compliance Reports. The Director of Energy Division sent letters to LSEs that submitted incomplete or incorrect reports directing them to file amended reports. Common mistakes included redacting data that should be public, submitting a public version of the report that was illegible, failing to fill out required information, and failing to provide supporting documentation for earmarking or minimum contracting requirements⁸. D.07-05-028 stated that the “Director of Energy Division may require LSEs that do not submit their RPS contracts for our approval to submit copies of contracts to Energy Division for verification of the terms, status, and categorization of the contract.”⁹ In the March 2009 Routine RPS Compliance Reports template, Energy Division included instructions directing LSEs to submit copies of contracts for this purpose. Energy Division also included this request in the e-mail that contained the March 2009 Routine RPS Compliance Reports template. Several LSEs failed to provide the requested documentation.

Under California law, including Public Utilities Code Section 7, the Commission may delegate authority to its Staff to perform certain functions. A citation program administered by Commission Staff for a specified violation will allow prompt action by Commission Staff.

This citation program is consistent with other approved citation programs. The procedures and proposed penalties are substantially similar to other Commission citation programs, for example the Resource Adequacy citation program.

The issuance of a citation for a specified violation is not mandatory. In the alternative, the Commission may initiate any authorized formal proceeding or pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or

⁸ D.07-05-028 requires LSEs to enter into long-term renewable energy contracts or contracts with new facilities before counting renewable generation from short-term contracts with existing facilities.

⁹ OP 7

otherwise by law or in equity. Finally, the Commission's enforcement of this Resolution by informal proceedings, formal proceedings, or otherwise, does not bar or affect the remedies otherwise available to other persons or government agencies.

COMMENTS

Public Utilities Code Section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS OF FACT:

1. D.05-07-039 established a schedule for Routine Renewables Portfolio Standard (RPS) Compliance Reports to be filed on March 1st and August 1st of each year, with the opportunity to supplement or amend the March filing by May 1st of that year.
2. D.06-10-050 established that Verified RPS Reports must be filed using California Energy Commission (CEC) verified RPS procurement data within 30 days after the CEC adopts an RPS Procurement Verification Report.
3. The Commission is authorized to enforce compliance with the RPS.
4. The Commission has the power to act as an enforcement agency and to ensure that penalties are promptly prosecuted and collected pursuant to Public Utilities Code Section 2101.

AB1

5. Public utilities are subject to Commission enforcement action and penalties pursuant to Public Utilities Code Sections 2102-2105, 2017, 2108 and 2114.
6. Pursuant to Public Utilities Code Section 394.25, electric service providers are subject to Commission enforcement action pursuant to Public Utilities Code Sections 2102-2105, 2017, 2108 and 2114 as if they were public utilities.
7. Community choice aggregators are subject to enforcement action pursuant to Public Utilities Code Section 2111.
8. Under California law, including Public Utilities Code Section 7, the Commission may delegate authority to its Staff to perform certain functions.
9. Delegation of authority to Commission Staff to issue citations and levy Scheduled Penalties for Specified Violations will encourage compliance with the RPS program reporting requirements.
10. The Scheduled Penalties set forth in Appendix A are reasonable, will encourage complete and timely filings of RPS compliance reports, and will encourage complete and timely responses to requests for information from Commission Staff that are related to the implementation and administration of the RPS.
11. The proposed procedures for the citation program ensure due process, fairness, and efficiency in the application of the citation program.

THEREFORE, IT IS ORDERED THAT:

1. The citation program and the Scheduled Penalties for the Specified Violations as described in Appendix A, are hereby adopted.
2. Authority is delegated to Commission Staff to issue citations and levy Scheduled Penalties for the Specified Violations set forth in Appendix A to enforce compliance for Load Serving Entities subject to the Commission's Renewables Portfolio Standard reporting requirements.
3. The issuance of a citation for a Specified Violation is not mandatory, and, in the alternative, the Commission may initiate any formal proceeding authorized by the California Constitution, the Public Utilities Code, other state and federal statutes, court decisions or decrees, the Commission's Rules of Practice and Procedure, or prior Commission orders, decisions, rules, directions, demands or requirements, and pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity.
4. Nothing in this Resolution bars or affects the rights or remedies otherwise available to other persons or government agencies.
5. Resolution E-4257 is enacted.
6. 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 July 30, 2009; the following Commissioners voting favorably thereon:

Paul Clanon
Executive Director

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APPENDIX A

Renewables Portfolio Standard Citation Program

1.0 Specified Violations and Scheduled Penalties

1.1 “Specified Violation” means the failure, absent an approved extension, to submit: (a) a Routine Renewables Portfolio Standard (RPS) Compliance Report at the time or manner required; (b) a Verified RPS Compliance Report at the time or manner required; and (c) other supporting data required by Staff that is related to the implementation and administration of the RPS program.

1.2 “Scheduled Penalties” for Specified Violations are set forth in Appendix A.

1.3 Modification of Scheduled Penalties. Scheduled Penalties may be modified by Resolution.

2.0 Procedures for Citation Program

2.1 Citations for Specified Violations. After appropriate informal investigation and verification that a Specified Violation defined in this Resolution has occurred, Commission Staff is authorized to issue a citation. The Specified Violations and the corresponding Scheduled Penalty that may be levied are described in this Appendix.

2.2 Service of Citations. Citations shall be sent by Commission Staff by first class mail to the Respondent at the address of the agent for service of process.

2.3 Content of Citations. Citations shall state the alleged violation, the evidence supporting the alleged violation, and the proposed Scheduled Penalty. The citation may summarize the evidence and Commission Staff shall make the evidence available for timely inspection upon request by the Respondent. Citations also shall include an explanation of how to file an appeal of the citation, including the explanation of a right to have a hearing, to have a representative present at the hearing, and to request a transcript.

2.4 Response to Citation. A Respondent may either: (1) accept the citation and the Scheduled Penalty; or (2) appeal the citation.

2.5 Filing with Commission Staff. Unless otherwise specified, “notify Commission Staff,” “filing,” or “file” means to send a written communication by the U.S. Mail or an express mail service to the address specified in the order or citation that requires the filing or notification. These written communications are not filed with the Commission’s Docket Office. In addition to or instead of communications by mail service, Commission Staff may allow electronic submissions.

2.6 Acceptance of Scheduled Penalty. In the event the proposed Scheduled Penalty is accepted, the Respondent shall notify Commission Staff in writing and shall pay the penalty in full as set forth in subsection 2.8, below within thirty (30) days of the date of the citation.

2.7 Appeal of Citation. In lieu of accepting the Scheduled Penalty, a Respondent may appeal the citation and request a hearing. In the event of an appeal, any remedy available may be imposed, and the remedy shall not be mandated by or limited to the Scheduled Penalty.

2.7.1. Notice of Appeal. To appeal a citation, the Respondent must file a written Notice of Appeal. The Notice of Appeal must state the grounds for appeal and be filed with Commission Staff within thirty (30) days of the date of the citation.

2.7.2. Referral to Administrative Law Judge. Upon receipt of a timely Notice of Appeal, Commission Staff shall promptly provide a copy of the Notice of Appeal to the Chief Administrative Law Judge. The Chief Administrative Law Judge shall promptly designate an Administrative Law Judge to hear the appeal.

2.7.3 Time of Hearing. No less than ten (10) days after the Notice of Appeal is filed, the assigned Administrative Law Judge shall set the matter for hearing promptly. The Administrative Law Judge, may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.

2.7.4 Location of Hearing. Appeals of citations shall be heard in the Commission’s San Francisco courtroom on regularly scheduled days.

2.7.5 Transcripts. The Respondent may order a transcript of the hearing, and shall pay the cost of the transcript in accordance with the Commission’s specified procedures.

2.7.6 Representation at Hearing. The Respondent may be represented at the hearing by an attorney or other representative, but any such representation shall be at the Respondent's expense.

2.7.7. Evidentiary Hearing. At an evidentiary hearing, Commission Staff bears the burden of proof and, accordingly, shall open and close. The Administrative Law Judge may, in his or her discretion to better ascertain the truth, alter the order of presentation. Formal rules of evidence do not necessarily apply, and all relevant and reliable evidence may be received at the discretion of the Administrative Law Judge.

2.7.8 Submission. Ordinarily, the matter shall be submitted at the close of the hearing. The Administrative Law Judge, upon a showing of good cause, may keep the record open for a reasonable period to permit a party to submit additional evidence or argument.

2.7.9 Decision. The Administrative Law Judge shall issue a draft Resolution resolving the appeal not later than thirty (30) days after the appeal is submitted in accordance with subsection 2.7.8, and the draft Resolution shall be placed on the first available agenda, consistent with the Commission's applicable rules.

2.7.10 Communications. From the date that a citation is issued to and including the date when the final decision is issued, neither the Respondent nor Commission Staff, or any agent or other person on behalf of the Respondent or Commission Staff, may communicate regarding the appeal, orally or in writing, with a Commissioner, Commissioner's advisor, or Administrative Law Judge.

2.8 Payment of Scheduled Penalties. Payment of Scheduled Penalties shall be submitted to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check, payable to the Public Utilities Commission for the credit of the State General Fund.

2.9 Default. If the Respondent: (a) notifies Commission Staff of acceptance of a Scheduled Penalty and fails to pay the full amount of the Scheduled Penalty within thirty (30) days of the date of the written acceptance of the Scheduled Penalty; or (b) fails to notify Commission Staff of acceptance of a Scheduled Penalty or fails to file a written Notice of Appeal in the manner and time required, then the citation and penalty shall become final and the

Respondent is in default. Upon default, any unpaid balance of a Scheduled Penalty shall accrue interest at the legal rate of interest for judgments, and Commission Staff and the Commission may take any action provided by law to recover unpaid penalties and ensure compliance with applicable statutes and Commission orders, decisions, rules, directions, demands or requirements.

2.10 Reporting. Commission Staff shall regularly report to the Commission summarizing actions taken pursuant to this Resolution. The report shall include a summary of the citations and penalties imposed, penalties paid, and the disposition of any appeals.

SPECIFIED VIOLATIONS AND SCHEDULED PENALTIES

SPECIFIED VIOLATION	SCHEDULED PENALTY
Failure to file a Routine RPS Compliance Report at the time or manner required. This includes the Project Development Status Report that the Investor Owned Utilities must file.	\$500 per incident plus \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.
Failure to file a Verified RPS Compliance Report at the time or manner required.	\$500 per incident plus \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.
Failure to comply with a request for information from Commission Staff that is related to implementation of the RPS in the time or in the manner required.	\$500 per incident plus \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.