
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 26, 2010

Agenda ID #9518

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-253

This draft resolution regarding Modification of Penalty Assessed to Commerce Energy, Inc. in Citations E-4195-0004, E-4195-0005, and E-4195-0006 will be on the agenda at the July 8, 2010 Commission meeting. The Commission may then vote on this draft resolution, or it may postpone a vote.

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 June 15, 2010, and reply comments shall be served no later than June 21, 2010. 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 Administrative Law Judge David M. Gamson at dmg@cpuc.ca.gov, and for that purpose I suggest e-mail, hand-delivery, overnight mail, or other expeditious method of service.

/s/ KAREN V. CLOPTON

Karen V. Clopton, Chief
Administrative Law Judge

KVC:hkr

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-253
Administrative Law Judge Division
July 8, 2010

R E S O L U T I O N

RESOLUTION ALJ-253 Modifies Penalty Assessed to Commerce Energy, Inc. in Citations E-4195-0004, E-4195-0005, and E-4195-0006.

The Commission's Consumer Protection and Safety Division issued Citations E-4195-0004, E-4195-0005, and E-4195-0006 to Commerce Energy, Inc. (CE) on March 8, 2010, charging CE with failure to file month-ahead system resource adequacy compliance filings at the time or in the manner required for the months of October, November, and December 2009. The citations assessed penalties of \$13,000, \$18,000, and \$2,500 for October, November, and December 2009, respectively. CE timely appealed the citations by notice of appeal dated April 7, 2010. Administrative Law Judge David Gamson heard the appeal at hearings on May 4 and May 12, 2010.

CE admitted to providing inaccurate information to either Energy Division or the California Energy Commission, or both, for each month in contravention of E-4195. The nature of the inaccuracies was disputed at hearings, but not the fact that there were inaccuracies. As all load-serving entities (such as CE) are aware, the Commission's resource adequacy program requires timely and accurate information. Thus a citation was warranted for each month.

There is no indication that CE's errors were purposeful, and CE corrected the errors soon after notification. Further, CE's errors did not lead to any procurement deficiencies. However, even after the first error was identified (and subsequently corrected), CE again provided inaccurate information the next two months. This Resolution modifies the citations to lower the penalty for the first violation in order to reflect the actual number of days CE took to correct errors after being notified by the California Energy Commission or the Energy Division. For the second and third violations, the citation penalties are upheld due to repeated inaccuracies.

FINDINGS OF FACT

1. As required, CE timely filed a load forecast with the California Energy Commission one month ahead of each of its October, November, and December Month-Ahead Resource Adequacy Compliance Filings with the Energy Division.
2. As required, CE timely filed October, November, and December 2009 Month-Ahead Resource Adequacy Compliance Filings with the CPUC Energy Division on August 31, 2009, September 30, 2009, and November 1, 2009, respectively.
3. CE's load forecasts filed with the California Energy Commission for October, November, and December 2009 were not consistent with the October, November, and December 2009 Month-Ahead Resource Adequacy Compliance Filings with the Energy Division.
4. After being informed of discrepancies between the October load forecast and the October RA month-ahead filing by Energy Division on September 10, 2009, CE corrected its October load forecast filing with the Energy Division on September 17, 2009.
5. After being informed of discrepancies between the November load forecast and the November RA month-ahead filing by Energy Division on October 21, 2009, CE corrected its November load forecast filing with the Energy Division on October 22, 2009.
6. After being informed of discrepancies between the December load forecast and the December RA month-ahead filing by the California Energy Commission on November 2, 2009, CE corrected its December load forecast filing with the California Energy Commission on November 3, 2009.
7. CE's filing discrepancies did not lead to any procurement deficiencies.

CONCLUSIONS OF LAW

1. The Commission's resource adequacy program requires timely and accurate information.
2. CE's failure to file accurate October, November, and December 2009 Month-Ahead Resource Adequacy Compliance Filings with the Energy Division and/or accurate load forecasts with the California Energy Commission for these months constitutes Specified Violations under Resolution E-4195.

3. The issuance of a citation for a Specified Violation under Resolution E-4195 is not mandatory, but was reasonable under the circumstances.
4. Under the present factual circumstances, the citations should be modified to reflect the number of days it took for CE to submit corrected filings to the Energy Division or the California Energy Commission for the October 2009 violation. The citations should be upheld for repeated violations for November and December 2009.

COMMENTS

Public Utilities Code Section 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution.

IT IS THEREFORE ORDERED that:

1. Citation E-4195-0004 is modified to provide for a penalty of \$4,500.
2. Citation E-4195-0005 is upheld to provide for a penalty of \$18,000.
3. Citation E-4195-0006 is upheld to provide for a penalty of \$2,500.
4. The appeal process for the citations 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:

PAUL CLANON
Executive Director

INFORMATION REGARDING SERVICE

I have provided notification of the foregoing Draft Resolution ALJ-253 to the electronic mail addresses on the attached service list, as well as a Notice of Availability by U.S. mail.

Dated May 26, 2010, at San Francisco, California.

/s/ KE HUANG

Ke Huang

SERVICE LIST
Energy Citation Number E-4195-0004, E-4195-0005, and E-4195-0006
Updated 4/28/10 by AHG

Gregory S. G. Klatt
Douglass & Liddell
Attorney for Commerce Energy, Inc.
411 E. Huntington Drive #107-356
Arcadia, CA 91006
tel -- (818) 961-3002
fax -- (818) 961-3004
klatt@energyattorney.com

Robert L. Strauss
California Public Utilities Commission
Energy Division
505 Van Ness Avenue, Room 4-A
San Francisco, CA 94102
E-mail: rls@cpuc.ca.gov

David M. Gamson
Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue, Room 5019
San Francisco, CA 94102
E-mail: dmg@cpuc.ca.gov
(Assigned Administrative Law Judge)

Karen Miller
California Public Utilities Commission
Public Advisor Office
505 Van Ness Avenue, Room 2103
San Francisco, CA 94102
E-mail: knr@cpuc.ca.gov

Donald Brooks
California Public Utilities Commission
Energy Division
505 Van Ness Avenue, Room 4-A
San Francisco, CA 94102
E-mail: dbr@cpuc.ca.gov

Hillary Corrigan
California Energy Markets
425 Divisadero Street, Suite 303
San Francisco, CA 94118
Tel -- (415) 963-4439
Fax -- (415) 552-1560
E-mail: cem@newsdata.com

Kenneth Lewis
California Public Utilities Commission
Energy Division
505 Van Ness Avenue, Room 4012
San Francisco, CA 94102
E-mail: kl1@cpuc.ca.gov

Karen Paull
California Public Utilities Commission
Legal Division
505 Van Ness Avenue, Room 4300
San Francisco, CA 94102
E-mail: kpp@cpuc.ca.gov

Lynn Stanghellini
California Public Utilities Commission
Chief Court Reporter
505 Van Ness Avenue, Room 2106
San Francisco, CA 94102
E-mail: las@cpuc.ca.gov

Linda J. Woods
California Public Utilities Commission
Utility & Payphone Enforcement Branch
Consumer Protection & Safety Division
505 Van Ness Avenue, Room 2-A
San Francisco, CA 94102
E-mail: ljlw@cpuc.ca.gov

Peter Spencer
California Public Utilities Commission
Utility & Payphone Enforcement Branch
Consumer Protection & Safety Division
505 Van Ness Avenue, Room 2-E
San Francisco, CA 94102
E-mail: phs@cpuc.ca.gov

(END OF SERVICE LIST)