APPENDIX B

Modifications to Appendix A to Resolution E-4195
Resource Adequacy Citation Program
(modifications in italics)

The Resource Adequacy program currently requires several compliance filings:

- **"**Historic Load Data": actual load data from the prior year submitted to the California Energy Commission.

- **"**Preliminary Load Forecast": an annual, year-ahead hourly load forecast for all twelve months of the following year submitted to the California Energy Commission.

- "Preliminary Local Resource Adequacy Compliance Filing": a compliance filing with appropriate Commission Staff using an approved template and under approved rules that demonstrates the LSE's capacity contracts for all months of the upcoming compliance year.

- **"**Year-Ahead System Resource Adequacy Compliance Filing**":** an annual compliance filing with the appropriate Commission Staff using an approved template that demonstrates qualifying capacity contracts in sufficient megawatt quantities to satisfy the 90 percent forward commitment obligation for loads plus reserve requirements for each of the five summer months, May – September, of the following year.

- "Year-Ahead Local Resource Adequacy Compliance Filing": an annual compliance filing with the appropriate Commission Staff using an approved template that demonstrates qualifying capacity contracts in sufficient megawatt quantities to satisfy 100 percent of the local procurement obligation for each month of the next compliance year (e.g. currently January through December).

- **"**Month-Ahead System Resource Adequacy Compliance Filings**":** (1) a monthly compliance filing with appropriate Commission Staff using an approved template which demonstrates: (a) acquisition of 100 percent of the qualifying system capacity obligation (adjusted forecast plus reserve margin) for a "compliance month" from the qualifying capacity providers

maintained by the California Independent System Operator and the amount of capacity from each provider; and (b) the sale of any qualifying capacity previously identified in a Resource Adequacy compliance filing for Year Ahead Local Resource Adequacy requirements, and that the capacity remains fully available to the California Independent System Operator; and (2) a monthly load forecast submitted to the California Energy Commission demonstrating adjustments to the Preliminary Load Forecast for positive and negative load growth due to load migration.

This citation program establishes specified fines for failure to make required filings, filing late, or failure to file in the proper manner. The penalty for failure to file the Year-Ahead Local Resource Adequacy filing, which was specifically determined in D.06-06-064, will not be the subject of this citation program, but will be enforced through formal Commission proceedings.[1]

The issuance of a citation for a specified violation is not mandatory. In enforcing compliance with Resource Adequacy filing requirements, or in response to any Specified Violation, 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 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.

CITATION PROGRAM

1.0 Specified Violations and Scheduled Penalties

1.1 "Specified Violation" means the failure, absent an approved extension, to submit: (a) any load data, load forecast or other Resource Adequacy compliance filing in the time and manner required; and (b) other supporting data required by Staff that is reasonably related to the implementation of the Commission's Resource Adequacy program. Submitting an RA filing with a small procurement deficiency is also a Specified Violation.

[1] D.06-06-064, mimeo. at pp. 69-70 and p. 87, Conclusion of Law 26.

1.1.1 "Deficiency cured within five business days from the date of notification" means a deficiency in capacity procurement by an LSE where the deficiency was remedied within five business days after notification by Energy Division staff. Upon identification of a procurement deficiency by Energy Division staff, Energy Division staff will notify the LSE of the deficiency and the LSE will be able to cure the deficiency within five business days for a set penalty. This Specified Violation will not apply in the event that the LSE does not cure the deficiency within the next five business days. The Specified Violation provides for penalties in the event that the deficiency is greater then or less than 10 MW. A deficiency in procurement is not to be also taken as a Specified Violation for filing not in the manner required, although if the filing is also late, then the LSE may also be subject to a Specified Violation related to late filing. In addition, penalties double in the event that the violation is repeated more than once in a compliance year.

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 Resolution.

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, except as expressly permitted under these procedures.

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 Historic Load Data at the time *and* manner required.	$1,000 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 Preliminary Load Forecast at the time *and* manner required.	$1,000 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 Month-Ahead System Resource Adequacy Compliance Filing at the time *and* the manner required.	$1,000 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 Preliminary Local Resource Adequacy Compliance Filing, or a Year-Ahead System Resource Adequacy Compliance Filing at the time *and* manner required.	$1,000 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 Energy Division that is reasonably related to implementation of the resource adequacy requirements in the time *and* manner required.	$1,000 per incident *plus* $500 per day for the first ten days the filing was late and $1,000 for each day thereafter.
Deficiency cured within five business days from the date of notification	$5,000 per incident if the deficiency is 10 MW or smaller, $10,000 for a deficiency larger than 10 MW. For the second and each subsequent deficiency in any calendar year, penalties will be $10,000 per incident if the deficiency is 10 MW or smaller, $20,000 for a deficiency larger than 10 MW.

(END OF APPENDIX B)