

ATTACHMENT A

mechanisms are adopted in order to allow the utilities to engage in good faith efforts to maximize ratepayer benefits and promote orderly renewable resource development. For example, utilities should be encouraged to commit to long-term purchases from new facilities that, due to development lead time and a future online date, may not deliver energy to satisfy a current year RPS obligation. Discretion to use large deferrals should not be unlimited in order to ensure that a utility is not permitted to actively and unnecessarily frustrate RPS program objectives.

Every party that addressed penalties acknowledged the Commission's authority to impose penalties under Pub. Util. Code § 399.14(d) and its existing authority. (See, e.g., SCE Opening Brief, pp. 12-13; PG&E Reply Brief, pp. 30-31.) A number of parties, including CalWEA and TURN,⁴⁴ recommended the Commission adopt automatic penalties for non-compliance. While we do not believe that automatic penalties should be assessed in the event of non-compliance, we agree that a compliance program establishing upfront, pre-determined penalties would encourage each utility to meet its APT. Such a program will provide concrete and transparent rules in advance of each utility's RPS activities and removes the uncertainty of an open-ended order to show cause process with unspecified consequences for a utility. Moreover, the procedure adopted below comports with the intent of SB 1976 (which contains the language commonly referenced as AB 57), which prohibits most instances of after-the-fact reasonableness review for procurement, and in Pub. Util. Code § 454(c)(3), requires the Commission to set "upfront and achievable standards and criteria" for procurement⁴⁵.

⁴⁴ SDG&E disagreed with TURN on this issue.

⁴⁵ ORA Reply Comments on Alternate Proposed Decision, p. 3.

The Commission's goal in adopting this compliance procedure is to create clear consequences for utility inaction. It is the Commission's clear desire to never assess penalties out of our hope and expectation that each utility continually meets its APT or utilizes the flexible compliance mechanism to satisfy its APT.

In order to ensure each utility meets its APT requirement as outlined above, each utility is required to make a filing on February 1 of the year following the applicable APT year outlining the results of achieving its APT. In addition, on July 1 (or the next business day thereafter) of each year, each utility should make a filing to the Commission outlining its progress toward achieving that year's APT, using a similar format to the February 1 filing. In the February 1 filing, each utility should clearly indicate its APT for the relevant year, its additional renewable procurement that is eligible to meet this requirement, sorted by renewable source type (e.g., wind, solar, biomass, geothermal, etc.), an accounting of past, current and anticipated future deficits and any additional information deemed necessary based on utility consultation with the Commission's Energy Division. The July 1 filing should contain the same information but with a clear delineation between actual and forecast quantities for the applicable year.

If the utility has met its APT, subject to the flexible compliance mechanisms adopted in this decision, the February 1 filing will be only a compliance filing. However, if the utility is below the 75% annual threshold described above (while noting the first year exception), this filing is the utility's opportunity to demonstrate why its APT shortcoming is a result of one or more of the four reasons for non-compliance outlined above. If the utility's shortcoming is not a result of one or more of these reasons, this filing represents the utility's opportunity to seek approval for annual shortfalls greater than 25%

of the APT if the conditions of §399.14(c) are triggered⁴⁶ or to convince the Commission that a deferral would promote ratepayer interests and the overall procurement objectives of the RPS program. This filing should also include a calculation of any penalties to be assessed for APT deficits above the 25% threshold granted to the utility for each year. The penalty shall be calculated based on five cents per kilowatt-hour, as proposed by various parties including CEERT and TURN and implemented in other states (e.g., Texas and Massachusetts), with an overall annual penalty cap per utility of \$25 million⁴⁷, as proposed by TURN.⁴⁸ The Commission can choose to alter or eliminate this amount upon consideration of the utility's reasons for non-compliance. The Commission will act within 90 days of receiving this filing.

We remind the utilities that we are not limited to only one means to ensure compliance with the RPS program under Pub. Util. Code §399.14(d). Therefore, we remind the utilities that, if necessary, we shall exercise our authority to impose other penalties as permitted under §399.14(d), including issuing an order to show cause (OSC), to ensure continued compliance.

We reject the TURN/SDG&E recommendation to have each utility file this request to go below the 75% threshold before the end of the year as we expect utility data collection to have some lag behind actual energy production and

⁴⁶ Under §399.14(c), the Commission may direct a utility to conduct a new solicitation if it determines that "bid prices are elevated due to a lack of effective competition amongst the bidders."

⁴⁷ See TURN Opening Brief, pp. 38-40.

⁴⁸ These are interim numbers; parties will have an opportunity to make recommendations on the exact amount of the penalty level and cap in the next phase of this proceeding, but will not get the chance to re-litigate the issue of whether or not to adopt a compliance procedure utilizing upfront, pre-determined penalties.

because making this determination before the end of the year may be only an exercise in forecasting and speculation. However, any utility may seek advance