

**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.

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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 Citation E-4195-0004 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 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.
8. The Consumer Protection and Safety Division correctly calculated penalties pursuant to Resolution E-4195.

**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. Because CE's errors were not purposeful, were promptly corrected, and no procurement deficiencies occurred, Citation E-4195-0004 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. Citations E-4195-0005 and E-4195-0006 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. The Consumer Protection and Safety Division commented on the Resolution on June 15, 2010.

### **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.

