**FILED**
07/13/23
04:59 PM
K2103005

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ-442
Administrative Law Judge Division
July 13, 2023

# R E S O L U T I O N

RESOLUTION ALJ-442. Resolves the Appeal K.21-03-005 of Citation E-4195-0098 by San Diego Community Power.

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## SUMMARY

This resolution resolves San Diego Community Power's (SDCP or Appellant) appeal of Citation No. E-4195-0098 by the California Public Utilities Commission's Consumer Protection and Enforcement Division. Citation E-4195-0098 cites and fines SDCP for failing to procure its September 2021 year-ahead system Resource Adequacy obligation.[1] This Resolution denies the appeal, and this proceeding is closed.

## BACKGROUND

On November 2, 2020, San Diego Community Power (SDCP or Appellant) filed its 2021 year-ahead system Resource Adequacy (RA) compliance filing. On January 4, 2021, the California Public Utilities Commission's (Commission) Energy Division sent SDCP a deficiency notice, indicating a need to procure additional megawatts of September 2021 system RA and provided a deadline of January 11, 2021, to come into compliance. On January 11, 2021, SDCP submitted a revised filing, indicating that it had procured additional megawatts of September 2021 system RA.

On February 3, 2021, the Commission's Consumer Protection and Enforcement Division (CPED) issued Citation E-4195-0098 to SDCP. A penalty of $388,288 was assessed in

[1] We note that while CPED and SDCP submitted filings that redacted the deficiency month and RA type for this citation appeal, SDCP's March 5, 2021 Notice of Appeal disclosed this information.

accordance with the schedule of penalties in Resolution E-4195, as modified. On March 5, 2021, SDCP filed a notice of appeal of Citation E-4195-0098.

On March 19, 2021, CPED filed a Compliance Filing pursuant to Resolution ALJ-377. On April 12, 2021, CPED and SDCP filed a Joint Submission to the Administrative Law Judge's (ALJ) ruling. On April 16, 2021, the ALJ issued a ruling setting the procedural schedule and requesting additional information. On May 25, 2021, CPED filed a Response to the ALJ's Ruling. On June 7, 2021, SDCP served prepared testimony.

On July 13, 2021, the proceeding was reassigned from ALJ Joanna Gubman to ALJ Sasha Goldberg. On August 9, 2021, CPED and SDCP filed a Joint Submission of Additional Facts pursuant to an ALJ ruling. Opening briefs were submitted on September 20, 2021, and reply briefs were submitted on October 15, 2021.

On November 22, 2021, an ALJ ruling requested additional briefing. Second opening briefs were submitted on December 10, 2021, and second reply briefs were submitted on January 10, 2022. On February 22, 2022, SDCP filed a response to the ALJ's ruling.

On March 14, 2022, an ALJ ruling set forth the remaining procedural schedule and directed the filing of additional information. The ruling stated that after the receipt of a joint filing by SDCP and CPED (either a joint stipulation or motion identifying documentary evidence to be moved into the evidentiary record), the proceeding will be formally submitted. On April 11, 2022, SDCP filed a response to the ALJ's ruling. On April 22, 2022, SDCP and CPED filed a Joint Motion to Admit Evidence into the evidentiary record.

On April 25, 2022, the proceeding was reassigned from ALJ Sasha Goldberg to ALJ Peter Wercinski. On August 24, 2022, the ALJ issued a ruling requesting a joint report that addressed the admission of additional evidence and any other matters before the issuance of a draft resolution. On September 12, 2022, SDCP and CPED served a Joint Report stating that the parties agree that no additional issues need to be addressed prior to the issuance of a draft resolution.

On January 6, 2023, the proceeding was reassigned from ALJ Peter Wercinski to ALJ Debbie Chiv. On April 27, 2023, the ALJ granted parties' motions to admit evidence and motions to seal.

## STANDARD OF REVIEW

### 1. Applicable Rules and Decisions on RA Enforcement and Citation Appeals

Public Utilities (Pub. Util.) Code § 380 governs California's Resource Adequacy program. Section 380(e) addresses enforcement of the RA requirements and provides that:

> The commission shall implement and enforce the resource adequacy requirements established in accordance with this section in a nondiscriminatory manner. Each load-serving entity shall be subject to the same requirements for resource adequacy and the renewables portfolio standard program that are applicable to electrical corporations pursuant to this section, or otherwise required by law, or by order or decision of the commission. The commission shall exercise its enforcement powers to ensure compliance by all load-serving entities.

In Decision (D.) 05-10-042, the Commission adopted a penalty regime for load-serving entities (LSEs) that fail to procure sufficient system RA capacity.[2] Resolution E-4017 established a citation program to enforce the Commission's RA program requirements and included a schedule of penalties. Resolution E-4195, adopted on November 6, 2008, superseded and replaced Resolution E-4017 in its entirety, and updated the schedule of penalties for violations of the RA requirements. Resolution E-4195 has been modified by several decisions, including D.10-06-036, D.11-06-022, D.14-06-050, and D.19-06-026.

Resolution ALJ-377 established a standardized appeal process for citation appeals and applies here. Pursuant to Resolution ALJ-377, Commission staff has the burden to prove by a preponderance of evidence the case supporting issuance of a citation. If that initial burden is met, the burden shifts to the appellant "to demonstrate that a violation did not occur, and the citation should not issue or that the amount of the penalty is inappropriate."[3]

Lastly, in D.98-12-075, the Commission identified five factors to consider in determining the appropriate level of a fine: (1) the severity of the offense, (2) the entity's conduct, (3) the entity's financial resources, (4) the role of precedent, and (5) the totality of the circumstances in the public interest.[4] The five-factor test is applicable in reviewing this citation appeal.

## DISCUSSION

### 1. The Citation Correctly Identified and Calculated Appellant's September 2021 Year-Ahead System RA Deficiencies

The parties agree that the citation correctly identified Appellant's September 2021 year-ahead system RA deficiencies and that the citation correctly applied the RA

[2] D.05-10-042 at Conclusion of Law (COL) 21.

[3] ALJ-377, Appendix A.

[4] *See* D.98-12-075, 1998 Cal. PUC LEXIS 1018, at 52-59.

penalty schedule to those deficiencies when calculating the penalty amount.[5] As such, CPED has met its burden to demonstrate that Appellant's September 2021 year-ahead system RA procurement was deficient by the amount shown on the citation and that the penalty amount was correctly calculated based on the established penalty schedule.

Under Resolution ALJ-377, once Commission staff has met its initial burden, the burden shifts to Appellant to demonstrate that a violation did not occur and the citation should not issue, or that the amount of the penalty is inappropriate. Appellant also has the burden to prove any affirmative defenses.

**2. Appellant Failed to Meet its Burden to Prove that It Was "Impossible" to Procure RA Resources**

SDCP asserts an affirmative defense that it was "impossible" for it to obtain the necessary RA resources. SDCP argues that "it was impossible for SDCP to procure the necessary resources at any price" and that the "principal cause" of SDCP's deficiencies was "a well-documented lack of available supply in the capacity market…."[6] For the reasons discussed below, we find that SDCP failed to meet its burden to prove an impossibility defense.

First, September 2021 system RA resources were available for procurement in 2020 through the investor-owned utilities' (IOU) requests for offer (RFO) solicitations; however, SDCP opted not to participate in all available IOU solicitations. San Diego Gas and Electric Company (SDG&E) issued a solicitation in June 2020 and Southern California Edison (SCE) issued a solicitation in September 2020, both of which included September 2021 system RA resources.[7] Yet, SDCP only bid into SDG&E's solicitation.[8]

SDCP provides no explanation as to why it failed to participate in SCE's solicitation for available system RA resources. By choosing not to participate in SCE's solicitation, SDCP failed to even attempt to procure available system RA resources and therefore, SDCP's argument that it was "impossible" to procure September 2021 system resources is unavailing.

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[5] Joint Submission Pursuant to Administrative Law Judge's March 25, 2021 Email Ruling, April 12, 2021, at 1.

[6] SDCP Opening Brief, September 20, 2021, at 10.

[7] Exhibit CPED-03, SCE Response to CPED Data Request, Set One, Questions 1 and 2, Response to Question 001; Exhibit CPED-04, SDG&E Response to CPED Data Request, Set One, Questions 1 and 2, Response to Request 1. We note that Pacific Gas and Electric Company held RFO solicitations in 2019 that included September 2021 system RA. However, SDCP did not submit its implementation plan and statement of intent to serve customers to the Commission until December 2019. *See* SDCP Notice of Appeal, March 5, 2021, at 2.

[8] Exhibit SDCP-06, Declaration of John Dalessi in Support of SDCP's Response to Data Request DR-ELE-00174-1, at Paragraph 18.

Second, SDCP admits that it rejected offers that would have partially reduced its system RA deficiency. SDCP states that it undertook bilateral negotiations to attempt to procure RA resources and that in October 2020, SDCP "received an expression of interest" that included September 2021 system RA.[9] However, SDCP "rejected those offers because the volumes were insufficient to meet SDCP's needs, and the offers were deemed overpriced."[10] Further, in SDCP's prepared testimony, Mr. Dalessi testifies that SDCP "rejected two offers that would have partially reduced the system RA deficiency" and that "even if the offers were accepted, SDCP would still be deficient in meeting its system RA obligations."[11] While SDCP may still have been deficient in meeting its RA obligations if it had accepted those offers, SDCP would have reduced its system deficiency, which in turn would have lowered its overall penalty amount. By rejecting available system RA resources that would have reduced SDCP's RA deficiencies, SDCP fails to demonstrate that it was "impossible" to obtain the necessary RA resources.

Third, SDCP claims that system RA prices were not excessive but yet, it rejected available RA resources that it deemed were too expensive. In its Notice of Appeal, SDCP attests that it "is not claiming that the cost of System RA was excessive, or that the program was financially constrained in its procurement efforts."[12] SDCP further testifies that it "was even willing to pay significantly above-market prices" to secure RA resources.[13] But as cited above, SDCP rejected at least two offers for September RA that it determined was too expensive. SDCP claims that it was willing to pay significantly above-market prices for RA resources, then concedes that it rejected offers at the prevailing market prices, but then concludes that it was "impossible" to obtain the necessary RA resources. We are not persuaded.

The evidence clearly demonstrates that September 2021 system RA products were available to SDCP for procurement. However, SDCP failed to participate in SCE's RFO solicitation for available resources, declined available RA resources that would have partially reduced its RA obligations, and rejected available RA resources that it deemed were too expensive. SDCP has therefore failed to meet its burden to prove that it was "impossible" to procure September 2021 system RA resources to meet its obligations.

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[9] SDCP Opening Brief, September 20, 2021, at 6-7.

[10] *Id.*

[11] *See* Exhibit SDCP-05, Prepared Testimony of John Dalessi on Behalf of San Diego Community Power, at 21; Exhibit SDCP-06, Declaration of John Dalessi, at Paragraphs 27 and 28.

[12] SDCP Notice of Appeal, at 13.

[13] Exhibit SDCP-05, Testimony of John Dalessi, at 5.

## 3. Application of the Five-Factor Test Warrants Affirming the Citation and the Penalty

We next consider whether SDCP has satisfied its burden to demonstrate that the citation should not issue or that the amount of the penalty is inappropriate.

In D.98-12-075, the Commission identified five factors to consider in assessing the appropriate level of a fine: (1) the severity of the offense, (2) the entity's conduct, (3) the entity's financial resources, (4) the role of precedent, and (5) the totality of the circumstances in the public interest. We address each factor in turn.

### 3.1. Severity of the Offense

In D.98-12-075, the Commission stated that this factor includes several considerations:

> Economic harm reflects the amount of expense which was imposed upon the victims, as well as any unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in establishing the fine. In comparison, violations which caused actual physical harm to people or property are generally considered the most severe, with violations that threatened such harm closely following.[14]

The Commission further observed:

> Many potential penalty cases before the Commission do not involve any harm to consumers but are instead violations of reporting or compliance requirements. In these cases, the harm may not be to consumers but rather to the integrity of the regulatory processes. For example, compliance with Commission directives is required of all California public utilities: [citing Pub. Util. Code Section 702].[15]

The Commission noted that "[s]uch compliance is absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity."[16]

[14] D.98-12-075, at 54.

[15] *Id*. at 55.

[16] *Id*.

Based on the evidence, we find that SDCP deliberately failed to procure sufficient system RA capacity to meet the Commission's RA requirements. SDCP does not argue that it inadvertently failed to procure sufficient RA capacity. SDCP's deliberate failure to procure sufficient RA capacity, as required of an LSE participating in the RA program, threatened the reliability of the electrical grid. Indeed, as discussed above, SDCP admits that it deliberately rejected bids that would have reduced its system RA deficiencies and would have brought it closer to meetings its RA obligations.[17] As the Commission has previously held, "the deliberate failure to meet RA requirements is accorded a high level of severity."[18]

Moreover, SDCP's deliberate violations harmed the integrity of the Commission's regulatory processes. In establishing the RA penalty program, the Commission underscored the importance of holding LSEs that participate in the RA program accountable for non-compliance: "A regulatory program that imposes significant procurement obligations upon LSEs cannot be expected to succeed unless those LSEs have reason to believe there are consequences for noncompliance that outweigh the costs of compliance."[19] Thus, we find that disregarding a Commission directive is accorded a high level of severity.[20]

SDCP argues that because the "deficiency is small relative to SDCP's overall system requirement," the violation should be accorded a low level of severity.[21] However, the RA penalty structure applies a formula based on the LSE's MW amount of the deficiency. Therefore, the formula already accounts for a "small" deficiency and applies a corresponding penalty. We point out that SDCP could have reduced its penalty amount even further had it not rejected available system RA resources.

### 3.2. The Entity's Conduct

As stated in D.98-12-075, this factor "recognizes the important role of the public utility's conduct in (1) preventing the violation, (2) detecting the violation, and (3) disclosing and rectifying the violation."[22] In considering a utility's actions to prevent a violation, the Commission states that "[p]rudent practice requires that all public utilities take

[17] *See* Exhibit SDCP-05, Testimony of John Dalessi, at 21; Exhibit SDCP-06, Declaration of John Dalessi, at Paragraph 27 and 28.

[18] *Id*. *See also* Resolution ALJ-406, *Resolves K.20-04-005, the Appeal of City of San Jose, an administrator of San Jose Clean Energy,* at 5.

[19] D.05-10-042 at 93.

[20] *See* D.98-12-075 at 56; Resolution ALJ-406 at 5; Resolution ALJ-424, *Resolves the Appeal K.21-08-001 of Citation E-4195-100 by Commercial Energy*; Resolution ALJ-406, at 8.

[21] SDCP Opening Brief, September 20, 2021, at 12.

[22] D.98-12-075 at 56.

reasonable steps to ensure compliance with Commission directives" and that the Commission "will consider the utility's past record of compliance with Commission directives."[23] In considering a utility's actions to detect a violation, the Commission states that "[d]eliberate, as opposed to inadvertent wrong-doing, will be considered an aggravating factor."[24]

SDCP argues that "there was simply nothing more SDCP could have done to avoid and cure the deficiency…."[25] We disagree. As discussed in Section 2, SDCP failed to demonstrate that RA resources were not available for procurement during the relevant time period. Rather, the evidence shows that SDCP elected not to participate in certain available procurement opportunities, such as bidding in SCE's solicitation, rejected offers for available RA resources that would have reduced its deficiency amount, and declined available RA offers that it deemed to be too expensive.

In addition, SDCP issued three RFO solicitations for the 2020 RA compliance cycle.[26] Yet, the first two RFOs in May 2020 and September 2020 only solicitated for local RA resources and did not solicit for system RA resources. Only SDCP's last RFO, issued on October 14, 2020, solicited for system RA resources, a mere two weeks before the deadline to submit RA compliance showings.[27] SDCP received no bids for its last RFO.[28] It is unclear why SDCP did not solicit for system RA resources in its earlier May and September 2020 solicitations, or why SDCP waited until two weeks before the compliance deadline to solicit for system RA resources. For all of these reasons, we find that SDCP did not take all reasonable steps to ensure compliance with Commission directives.

The Commission has previously determined that where appellant's "failure to meet its regulatory requirements was deliberate, as opposed to inadvertent," this is considered an aggravating factor.[29] As such, SDCP's deliberate failure to meet its RA obligations is an aggravating factor.

Under this factor, we consider a utility's "past record of compliance with Commission directives."[30] At this time this proceeding was submitted, we are aware that SDCP

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[23] *Id*.

[24] *Id*. at 57.

[25] SDCP Opening Brief, September 20, 2021, at 14.

[26] *Id*. at 5.

[27] *Id*. at 7; Exhibit SDCP-07, SDCP RFO Solicitation Emails; Exhibit SDCP-06, Declaration of John Dalessi, at Paragraph 5, 15.

[28] SDCP Opening Brief, September 20, 2021, at 7.

[29] Resolution ALJ-424 at 8; Resolution ALJ-406 at 5.

[30] *See* D.98-12-075 at 56.

received two additional RA citations, and that SDCP filed a citation appeal for one of the citations, which the Commission has since denied.[31] However, because information about SDCP's other RA citations was not submitted into this proceeding, they do not inform this factor.

### 3.3. Financial Resources

Under this factor, D.98-12-075 states that "[e]ffective deterrence also requires that the Commission recognize the financial resources of the public utility in setting a fine which balances the need for deterrence with the constitutional limitations on excessive fines."[32] The Commission "intends to adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources."[33]

SDCP argues that it "did not decline to buy system RA because of a lack of financial resources."[34] CPED counters that this factor considers the financial resources of the LSE in relation to its ability to pay the fine, not the LSE's financial ability to procure RA.[35] We agree with CPED that whether an LSE had the financial resources to purchase RA does not inform our consideration of this factor. Rather, D.98-12-075 states that this factor considers "the financial resources of the public utility in setting a fine."

As SDCP does not argue that it lacks the financial resources to pay the penalty, this factor is neither a mitigating nor aggravating factor in our analysis.

### 3.4. Role of Precedent

D.98-12-075 provides that: "In future decisions which impose sanctions, the parties and, in turn the Commission will be expected to explicitly address those previously issued decisions which involve the most reasonably comparable factual circumstances and explain any substantial differences in outcome."[36] SDCP does not expressly address this factor other than to disagree with CPED's comparison of recent Commission resolutions to the instant appeal.[37]

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[31] *See* Resolution ALJ-432, *Resolves the Appeal K.21-11-001 of Citation E-4195-0107 by San Diego Community Power*.

[32] *See* D.98-12-075 at 56.

[33] *Id*.

[34] SDCP Opening Brief, September 20, 2021, at 14.

[35] CPED Opening Brief, September 20, 2021, at 10.

[36] D.98-12-075 at 60.

[37] SDCP Reply Brief, October 15, 2021, at 4.

In several recent Commission resolutions addressing RA citation appeals, the Commission determined that: (1) the appellant deliberately failed to procure sufficient RA capacity to meet its obligations, and (2) upheld the citation and penalty based on the penalty schedule tied to the size of the deficiency.[38] SDCP has provided no Commission precedent that adjusted an RA citation penalty downward or upward, or otherwise deviated from the RA penalty schedule.

SDCP argues that the Commission "must consider the RA market conditions that hindered SDCP's ability to meet its compliance obligations."[39] We disagree. To the contrary, the Commission has been clear in several recent resolutions in stating that market conditions do not excuse non-compliance with the RA requirements. SDCP's argument that it was unable to procure RA resources because resources could not be found in the market has been repeatedly denied by the Commission as a basis for mitigating or excusing an LSE's failure to comply with its RA requirements. In Resolution ALJ-406, which affirmed San Jose Clean Energy's citation for RA deficiencies, the Commission stated:

> [N]one of these [cited] decisions endorse the principle that commercial impracticability due to market conditions alone excuses compliance with RA requirements. Rather, the decisions uniformly emphasize that, while the Commission will act to protect ratepayers from the failure of the market due to market power, tight market conditions alone are not reason to excuse compliance with RA compliance.[40]

Similarly, in Resolution ALJ-424, affirming Commercial Energy's citation for RA deficiencies, the Commission stated that "LSEs are not excused from providing service due to market conditions."[41] We stated that "the cost of operating as an LSE as required by law is not a mitigating factor for failure to meet those [RA] requirements. Pub. Util. Code § 380(c) and the RA program require that, in order to operate as an LSE, the entity must meet its procurement obligations."[42] Further, in Resolution ALJ-298, affirming 3

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[38] *See* Resolution ALJ-424, *Resolves the Appeal K.21-08-001 of Citation E-4195-100 by Commercial Energy*; Resolution ALJ-406; Resolution ALJ-356, *Resolving Citation Appeal K.18-05-018 and affirming the penalty assessed against Pilot Power Group, Inc.*; Resolution ALJ-298, *Affirming the Penalty Assessed Against 3 Phase Renewables*; Resolution ALJ-382, *Resolves the Appeal K.19-03-024 of Citation E-4195-0052 by San Jose Clean Energy.*

[39] SDCP Opening Brief, September 20, 2021, at 10.

[40] Resolution ALJ-406 at 3.

[41] Resolution ALJ-424 at 16 (quoting ALJ-382 at 5).

[42] *Id*.

Phase Renewables' citation for RA deficiencies, the Commission held that "[f]ines under Resolution E-4195 need not take market conditions into account."[43]

Based on the Commission precedent addressing RA citation appeals, this factor favors affirming the citation penalty based on the penalty schedule tied to the size of the deficiency.

### 3.5. Totality of the Circumstances

D.98-12-075 provides that:

> Setting a fine at a level which effectively deters further unlawful conduct by the subject utility and others requires that the Commission specifically tailor the package of sanctions, including any fine, to the unique facts of the case. The Commission will review facts which tend to mitigate the degree of wrongdoing as well as any facts which exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.[44]

SDCP claims that "no penalty amount could effectively deter noncompliance since it was impossible for SDCP to procure the necessary resources at any price."[45] However, as discussed in Section 2, SDCP failed to demonstrate that it was impossible to procure the necessary RA resources at any price. Even with the prospect of a penalty, SDCP was not incentivized to procure available RA resources or to reduce its RA deficiency amount. If anything, SDCP's actions suggest that the RA penalty amounts are not sufficiently high to incentivize an LSE to comply with the RA requirements.

Based on the totality of the circumstances, including the previous four factors, we find no mitigating factors and several aggravating factors. Despite the aggravating factors, the Commission finds that the established RA penalty schedule should apply to SDCP's deficiency amount. As such, SDCP's assessed citation shall not be excused and the penalty shall not be reduced. SDCP should be aware that continued non-compliance with Commission programs and orders may result in a Commission investigation with potential penalties that greatly exceed the penalty schedule.

## CONCLUSION

Based on the five-factor test in D.98-12-075, SDCP failed to meet its burden to rebut CPED's demonstration that the violations occurred and SDCP failed to meet its burden

[43] Resolution ALJ-298 at COL 3.

[44] D.98-12-075 at 59.

[45] SDCP Opening Brief, September 20, 2021, at 10.

of persuasion that the citation penalty should be reduced or excused. The citation appeal is hereby denied.

## COMMENTS

Pub. Util. Code § 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. A draft of today's resolution was distributed for comment to the service list. On June 28, 2023, SDCP served comments on the draft resolution. SDCP reiterates arguments it previously made during the proceeding, which were considered prior to the issuance of the draft resolution.

SDCP comments that it did not "deliberately" fail to comply with its RA obligations. As discussed in the resolution, SDCP does not argue that it "inadvertently" failed to procure sufficient RA capacity. Therefore, the draft resolution is accurate in finding that SDCP "deliberately" failed to procure sufficient RA capacity. No changes have been made to this resolution.

## FINDINGS OF FACT

1. On February 3, 2021, CPED issued Citation E-4195-0098 to SDCP. A penalty of $388,288 was assessed in accordance with the schedule of penalties in Resolution E-4195, as modified.

2. On March 5, 2021, SDCP filed a Notice of Appeal of Citation E-4195-0098.

3. Citation E-4195-0098 correctly identifies SDCP's deficiencies in procurement of its September 2021 year-ahead system RA obligations.

4. Citation E-4195-0098 correctly calculates the penalties pursuant to the penalty schedule adopted in Resolution E-4195, as modified.

## CONCLUSIONS OF LAW

1. SDCP has not met its burden of rebutting CPED's demonstration that the violation occurred and failed to meet its burden of persuasion that the citation penalty should be reduced or excused.

2. Based on the review of the evidence and testimony, the citation and penalty amount were appropriately issued.

3. The citation should be affirmed.

Therefore**, IT IS ORDERED** that:

1. Citation E-4195-0098 is affirmed.

2. San Diego Community Power shall pay a fine of $388,288 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, San Francisco, California 94102 within 30 days of the effective date of this resolution.

3. K.21-03-005 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 July 13, 2023, the following Commissioners voting favorably thereon:

/s/ RACHEL PETERSON
Rachel Peterson
Executive Director

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners