

Decision 24-10-009 October 17, 2024

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

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.

Rulemaking 24-01-017

**DECISION ON MOTIONS FOR WAIVER OF RENEWABLES PORTFOLIO STANDARD PROGRAM REQUIREMENT FOR COMPLIANCE PERIOD 2017-2020**

**Summary**

This decision enforces California’s Renewables Portfolio Standard (RPS) program rules against CleanPowerSF, Direct Energy Business, LLC, and Pilot Power Group, LLC for non-compliance with mandatory inclusion of non-modifiable standard terms and conditions in their RPS contracts. Accordingly, each retail seller must pay a penalty of \$500. This decision also finds that CleanPowerSF, Direct Energy Business, LLC, and Pilot Power Group, LLC have complied with the Renewables Portfolio Standard program procurement quantity requirements for Compliance Period 2017-2020. Therefore, the waiver requests are moot and do not require further resolution.

This proceeding remains open.

## **1. Background of California's Renewables Portfolio Standard Program and Compliance Requirements**

The California Renewables Portfolio Standard (RPS) program is established by Chapter 516, Statutes of 2002 (Senate Bill (SB) 1078) and is codified in Public Utilities (Pub. Util.) Code Sections 399.11-399.33.<sup>1</sup> The RPS program has been modified over the years.<sup>2</sup> In 2018, SB 100 (de León, 2018) was signed into law, which increased and accelerated the RPS procurement to 60 percent by 2030 and set the goal for 100 percent of the state's retail electricity sales to come from renewable and zero-carbon resources by 2045.

The California Public Utilities Commission (Commission) adopts rules related to the RPS program, reviews RPS procurement plans submitted by retail sellers, and assesses retail sellers' compliance with their RPS obligations. The Commission is also authorized to enforce compliance with RPS mandates in multi-year compliance periods established by Pub. Util. Code Section 399.15(b)(1). Retail sellers demonstrate their compliance with the program requirements through the procurement and retirement of renewable energy credits (RECs), which must be recorded in the Western Renewable Energy Generation Information System (WREGIS) and verified by the California Energy Commission (CEC).<sup>3</sup> Retail sellers submit annual RPS compliance reports to the Commission, which are used to assess a retail seller's progress towards its compliance period

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<sup>1</sup> All references are to the Public Utilities Code, unless otherwise noted.

<sup>2</sup> See Chapter 464, Statutes of 2006 (SB 107); Chapter 685, Statutes of 2007 (SB 1036); Chapter 1, Statutes of 2011 (SBX1-2); Chapter 547, Statutes of 2015 (SB 350); and Chapter 312, Statutes of 2018 (SB 100).

<sup>3</sup> The CEC's RPS 2017-2020 Retail Sellers Procurement Verification Final Report was issued on January 31, 2023.

procurement obligations. After each multi-year compliance period concludes, a final, verified RPS compliance report is filed.

The compliance period at issue in this decision is from 2017 to 2020 and is deemed Compliance Period 3. During that period, retail sellers were subject to Decision (D.) 08-04-009, D.10-03-021, and D.11-01-025 on the use of standard terms and conditions, Procurement Quantity Requirements (PQRs), and enforcement rules adopted in D.11-12-052, D.12-06-038, and D.14-12-023. For Compliance Period 3, each retail seller must retire the number of RECs that equals the sum of 27 percent of its retail sales in 2017, 29 percent of its retail sales in 2018, 31 percent of its retail sales in 2019, and 33 percent of its retail sales in 2020. In addition to meeting the RPS procurement quantity requirements, retail sellers must procure a balanced portfolio of eligible renewable energy resources with contract term lengths appropriate to meet the long-term contracting requirement.

## **2. Background on RPS Citation Program**

The Commission's authority to regulate the RPS program is established by Pub. Util. Code Section 399.13(e), which states that "[i]f an electrical corporation fails to comply with a commission order adopting a renewable energy resource procurement plan, the commission shall exercise its authority to require compliance." Public utilities are subject to enforcement action and penalties pursuant to Pub. Util. Code Sections 2102-2105, 2107, 2108, and 2114. Electric service providers are subject to enforcement action pursuant to these same code

sections as if they were public utilities.<sup>4</sup> Community choice aggregators are subject to enforcement action pursuant to Pub. Util. Code Section 2111.<sup>5</sup>

For RPS Compliance Report filings due on August 1 each year, the Commission has adopted a citation program to enforce RPS reporting requirements. Failure to submit an annual RPS compliance report or to comply with a request for information or documentation from Commission staff that is related to the implementation of the RPS in the time or the format required within 10 business days of Commission staff's request results in \$500 per incident plus \$500 per day for the first 10 days from the first business day after the filing is due and \$1,000 per day every business day after that.<sup>6</sup>

Resolution (Res.) E-5143, issued on June 25, 2021, updates and replaces Res. E-4720, and outlines the alternative staff citation program allowing Energy Division staff to evaluate retail seller compliance and impose penalties for non-compliance with RPS filing deadlines and program rules. Staff are delegated the authority to issue citations for specific violations of the RPS program rules, including penalties for failure to submit complete and accurate RPS reports and failure to provide timely information to staff. However, the resolution also states that "the issuance of a citation for a specified violation is not mandatory."<sup>7</sup> Instead, the Commission can use a formal proceeding, or another process allowed under the applicable law.

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<sup>4</sup> Pub. Util. Code Section 394.25.

<sup>5</sup> The list in this paragraph is not meant to be exhaustive and the Commission may rely on any other applicable laws or regulations that apply.

<sup>6</sup> Res. E-4720 at 15-16.

<sup>7</sup> Res. E-5143, Ordering Paragraph (OP) 3.

D.03-06-071, D.14-12-023, and D.18-05-026 establish the penalty structure for REC deficiencies. D.18-05-026 is the most recent of these decisions and establishes the basic penalty at \$50 per REC.<sup>8</sup> For large investor-owned utilities, the cap is \$75 million for the first RPS compliance period, \$75 million for the second RPS compliance period, \$100 million for the third compliance period, and \$25 million each year for all following years, summed for each multi-year compliance period. For all other retail sellers, the cap is lesser of the penalty cap for the investor-owned utilities or a cap equal to 50 percent of the retail seller's PQR times \$50 per REC. This penalty scheme was applied to the retail sellers whose motions for waiver this decision considers.

Pub. Util. Code Section 399.15(b)(5)(A) - (D) establishes conditions to waive a retail seller's failure to meet procurement goals. These include inadequate transmission capacity, circumstances that delay procured eligible renewable energy resource projects, unanticipated curtailment of eligible renewable energy resources, and unanticipated increase in retail sales due to transportation electrification. None of these conditions encompass violations that involve the absence of mandatory terms and conditions in RPS contracts that are filed with compliance reports. D.14-12-023 establishes the submission and consideration process of waiving enforcement of RPS requirements. Retail sellers may first file a waiver motion in the RPS proceeding within 30 days of the Energy Director Letter advising of the non-compliance.<sup>9</sup>

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<sup>8</sup> D.18-05-026 at 8-9.

<sup>9</sup> D.14-12-023 at 12.

### **3. Waiver Motions**

CleanPowerSF,<sup>10</sup> Direct Energy Business, LLC (Direct), and Pilot Power Group, LLC (Pilot) each filed a motion seeking a determination that they met the PQRs for the 2017-2020 compliance period and rescission, or waiver of the assessed penalty assessed by the Commission staff. Each retail seller provided evidence that they met the PQRs and acknowledged that some of their contracts were missing mandatory standard terms and conditions. No party responded to these motions. Each retail seller's motion is summarized in Sections 3.1 through 3.3.

#### **3.1. CleanPowerSF's Motion**

On March 3, 2023, CleanPowerSF filed its *Final Compliance Period 3 (2017-2020) RPS Compliance Report* (CleanPowerSF Compliance Report). The Commission's Energy Division notified CleanPowerSF on April 17, 2024, that CleanPowerSF was found to be out of compliance with the RPS program requirements and imposed a penalty of \$10,010,909.<sup>11</sup> The Commission's Energy Division clarification, dated May 6, 2024, explained that "CleanPowerSF's RPS Compliance report included 269,343 RECs from contracts deemed deficient due to missing non-modifiable standard terms and conditions, resulting in an overall procurement quantity requirement deficit of 200,218 RECs which equates to an RPS penalty of \$10,010,909.00."<sup>12</sup>

On May 17, 2024, CleanPowerSF filed its *Motion for Waiver of Penalties and Motion to Determine Compliance with the RPS Procurement Reporting Requirements*

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<sup>10</sup> CleanPowerSF is the Community Choice Aggregation program developed and operated by the City of San Francisco, through the San Francisco Public Utilities Commission.

<sup>11</sup> See CleanPowerSF Motion, Appendix, Exhibit 1.

<sup>12</sup> CleanPowerSF Motion, Appendix, Exhibit 2.

*and to Rescind Assessed Penalty* (CleanPowerSF Motion or waiver request), seeking a determination that CleanPowerSF met the procurement quantity requirements for the 2017-2020 compliance period and rescission, or waiver of the assessed penalty assessed by the Commission staff.

In its motion, CleanPowerSF argues that it met its PQR by procuring and retiring 2,308,486 RECs, which exceeded its obligation of 2,308,478 RECs for Compliance Period 3. These RECs were verified by the California Energy Commission (CEC), which confirmed their eligibility and proper retirement.<sup>13</sup>

CleanPowerSF adds that the penalty arose from the Commission's disqualification of RECs associated with one contract missing the exact language of a non-modifiable standard terms and conditions (STC) governing eligibility of resources (STC 6), which will be discussed in Section 4.2. CleanPowerSF acknowledges this error but emphasizes that the omission caused no harm and that the RECs were otherwise eligible and verified. CleanPowerSF argues that this disqualification created a "paper deficiency" rather than a real shortfall in renewable energy procurement, leading to the assessed penalty.

Presenting evidence that it met its PQR through procurement and retirement of verified RECs, CleanPowerSF contends that the penalty conflicts with Pub. Util. Code Section 399.15(b)(8), which penalizes the failure to procure sufficient renewable energy.<sup>14</sup> In CleanPowerSF's case, the penalty was imposed not for a failure to procure, but for contractual technicality. CleanPowerSF references previous Decisions, particularly the Gexa case resolved by

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<sup>13</sup> CleanPowerSF Motion, Appendix, Exhibit 6 (CEC Verification Report).

<sup>14</sup> CleanPowerSF Motion at 10-11.

D.22-01-025, where a similar issue led to a different penalty regime under the RPS Citation Program rather than a volumetric penalty.<sup>15</sup>

### **3.2. Direct's Motion**

On March 1, 2023, Direct, an electric service provider, submitted its *Final Compliance Period 3 (2017-2020) RPS Compliance Report* (Direct Compliance Report). On April 18, 2024, Energy Division found Direct out of compliance with the RPS program. Because Direct did not include the exact wording of STC 6 in five of the RPS contracts, Energy Division has concluded that all 119,042 RECs from its five contracts are ineligible to count towards Direct's Compliance Period 3 RPS procurement obligations, resulting in an overall PQR deficit of 118,541 RECs and a RPS penalty of \$5,927,057.<sup>16</sup>

On May 17, 2024, Direct filed its *Motion for Waiver of the RPS PQR for Compliance Period 3* (Direct Motion or waiver request), seeking a determination that Direct met the procurement quantity requirements for the 2017-2020 compliance period and rescission, or waiver of the assessed penalty assessed by the Commission staff.

In its Motion, Direct disputes the position taken in the Final Determination and argues that it procured and retired sufficient RECs to meet its PQR, but notes that certain contracts were found to be deficient due to omission of STC 6.

While acknowledging the omission of STC 6 wording, Direct argues that this was an inadvertent, immaterial error that should not disqualify the RECs. Direct maintains that all RECs it procured and retired towards its Compliance Period 3 RPS obligations should qualify given that they came from facilities

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<sup>15</sup> CleanPowerSF Motion at 11.

<sup>16</sup> Direct Motion, Appendix B.

certified as RPS-eligible by the CEC and because output from those facilities, including all RECs delivered to and retired by Direct, satisfies all requirements of the RPS program. Additionally, all RECs provided from the five contracts at issue were properly tracked and retired in WREGIS in accordance with WREGIS requirements as well as requirements of the CEC and Commission and were properly included in Direct's RPS compliance report submitted to the Commission.<sup>17</sup>

### **3.3. Pilot's Motion**

On March 3, 2023, Pilot, an electric service provider, submitted its *Final Compliance Period 3 (2017-2020) RPS Compliance Report* (Pilot Compliance Report). The Commission's Energy Division notified Pilot on April 18, 2024, that Pilot was found to be out of compliance with the RPS program requirements and imposed a penalty of \$1,014,667. On May 17, 2024, Pilot filed a motion seeking a waiver of enforcement for its RPS PQR for Compliance Period 3. Pilot requests that the Commission waive and allow the 39,514 RECs to count towards its Compliance Period 3 PQR and if a penalty is assessed, base it on the omission of STCs rather than a PQR shortfall and calculate it as a minor fine.

Pilot asserts that it complied with the RPS program by procuring and retiring sufficient RECs to meet its PQR. The RECs were properly tracked, transferred, and retired in the WREGIS, and verified by CEC.

Pilot adds that the penalty issue stems from a specific RPS contract that inadvertently omitted two non-modifiable STC: STC 6 (Eligibility) and STC 17 (Applicable Law). STC 6 requires that the generating facility be certified as an Eligible Renewable Energy Resource by the CEC and that its output qualifies

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<sup>17</sup> Direct Motion at 3-5.

under the RPS program. STC 17 mandates that the contract be governed by California law and that parties waive their right to a jury trial.

First, Pilot argues that, although the RPS contract did not include the exact language of STC 6 or STC 17, the inadvertent omission of that language was immaterial as Pilot fully satisfied the requirements of each STC. According to Pilot, by procuring RECs from an RPS-eligible facility, Pilot met both of STC 6's core requirements: (1) that the facility providing the RECs is certified by the CEC as an Eligible Renewable Energy Resource, and (2) that the output from the facility qualifies under the RPS program. Further, although the original contract inadvertently omitted the exact wording of STC 17, the contract met the intention of STC 17 by creating an obligation to be governed by California law, including requirements that the contract was to be governed and performed according to the RPS program, relevant provisions of the Public Utilities Code, and the applicable rules, regulations, and decisions of the Commission and the CEC.<sup>18</sup>

#### **4. Discussion**

Upon review of the evidence and arguments presented by the retail sellers, the Commission concludes that the retail sellers have met their PQRs for Compliance Period 3; the retail sellers did not comply with the mandatory inclusion and reporting requirements of their contracts' STCs; and a lower penalty amount than what has been assessed is reasonable.

##### **4.1. Retail Sellers Met the Procurement Quantity Requirements for the 2017-2020 Compliance Period**

The Commission has reviewed all evidence and arguments submitted by CleanPowerSF, Direct, and Pilot. Each retail seller provided evidence that they

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<sup>18</sup> Pilot Motion at 5.

retired a sufficient quantity of RECs, as verified by CEC.<sup>19</sup> The Commission staff then determined the portfolio of RECs met portfolio balance and long-term requirements such that they could count towards PQRs for the Compliance Period 2017-2020. Therefore, the Commission concludes that all three retail sellers met their PQRs in Compliance Period 3.

#### **4.2. Retail Sellers Did Not Comply With Mandatory Reporting Requirements of Their Contracts' STCs but Caused No Harm**

As a general matter, retail sellers must provide relevant and complete compliance documentation to Energy Division staff.<sup>20</sup> In making its compliance determinations, Commission staff should review the entire course of an RPS procurement transaction.<sup>21</sup> According to citation authority under Res. E-5143, the retail sellers did not file their Final RPS Compliance Reports in the manner required.<sup>22</sup> The citation program sanctions retail sellers that fail to file complete and accurate reports on their RPS procurement and compliance. The compliance report includes the underlying contracts, and if the contracts are non-compliant, the Compliance Report is deficient and non-compliant.

CleanPowerSF, Direct, and Pilot acknowledged, and Energy Division staff found that some of the contracts were missing certain non-modifiable standard terms and conditions, as summarized in Table 1.

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<sup>19</sup> Pursuant to Rule 13.10 of the Commission's Rules of Practice and Procedure, we take official notice that CEC's RPS 2017-2020 Retail Sellers Procurement Verification Final Report was issued on January 31, 2023.

<sup>20</sup> D.06-10-019, D.06-10-050, D.11-01-026.

<sup>21</sup> See D.11-12-052 Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program at 13.

<sup>22</sup> Res. E-5143 (issued June 25, 2021) updates and replaces Res. E-4720.

**Table 1. Missing STCs**

<b>Retail Seller</b>	<b>Missing STC</b>	<b>Number of contracts with missing STC</b>
CleanPowerSF	STC 6	1
Direct Power	STC 6	5
Pilot	STC 6 and STC 17	1

STC 6 is a non-modifiable standard term and condition required by D.07-11-025. STC 6 addresses qualification of the project as an eligible renewable energy resource certified by the CEC and qualification of the project’s output under the requirements of the California RPS Program.<sup>23</sup> STC 6 provides:

Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an [Eligible Renewable Energy Resource] as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California [RPS]. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.<sup>24</sup>

RPS contracts of any length must include the non-modifiable standard terms and conditions for compliance with the California RPS program.<sup>25</sup> However, we find that, although several contracts were missing STC 6, the

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<sup>23</sup> D.07-11-025 at 16.

<sup>24</sup> D.08-04-009, Appendix A at 6.

<sup>25</sup> D.22-01-025 at CoL 1.

failure to include STC 6 in the proper format caused no harm to the claimed RECs, because the requirements of the STC 6 were satisfied as follows:

- 1) Each retail seller procured and retired qualified RECs from the contract missing the terms as required;
- 2) The CEC verified that the RECs are from eligible renewable resources, are not double counted, and are retired; and <sup>26</sup>
- 3) The retail sellers' non-compliant contracts contained substantially similar requirements to those in the STCs, but not in the format of the STCs.<sup>27</sup>

STC 17 is another non-modifiable standard term and condition required by D.08-04-009. STC 17 mandates that the RPS contract be governed by California law and that parties waive their right to a jury trial. STC 17 provides:

Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced, and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.<sup>28</sup>

In Pilot's case, the Commission finds that the failure to include STC 17 in the proper format caused no harm to the claimed RECs, because the requirements of the STC 17 were satisfied: Pilot's non-compliant contract contained substantially similar requirements to those in the STCs, but not in the format of STC 17.<sup>29</sup>

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<sup>26</sup> See CEC's RPS 2017-2020 Retail Sellers Procurement Verification Final Report.

<sup>27</sup> CleanPowerSF Motion at 13; Direct Motion at 13; Pilot Motion at 7.

<sup>28</sup> D.08-04-009, Appendix A at 7.

<sup>29</sup> Pilot Motion at 5.

### **4.3. A Lower Penalty is Reasonable**

Pursuant to Pub. Util. Code Section 399.15 and D.18-05-026, the Commission has the authority to regulate compliance with the RPS program and penalize non-compliance. Under this authority and penalty structure, the Commission issued letters to CleanPowerSF, Direct, and Pilot, concerning their non-compliance and based the penalty assessment on the number of RECs associated with the contracts missing STCs.

Given the lack of harm to the procurement considered herein caused by the missing STCs, the Commission finds that the citation program in E-5143 is more aligned with the violations due to the focus on the accuracy and timeliness of RPS program filings and reports. The RPS Staff Citation Program provides for a penalty that is more appropriate given the severity of the violations. Hence, following the precedent set in the Gexa decision, it is reasonable to reduce the penalty assessed by the Energy Division by basing it on the incident<sup>30</sup> but not on the number of RECs associated with contracts missing the required STC. Res. E-5143 specifies scheduled penalties for certain RPS reporting violations.<sup>31</sup> Typically, a retail seller would be assessed a penalty of \$500 for the incident and \$500 per day for the first ten days the submission is late and \$1,000 for each day thereafter. However, Commission rules do not authorize retroactive amendments to contract language during the compliance period and/or after the compliance reports are filed.<sup>32</sup> Therefore, there is no opportunity for a retail sellers to amend the contract and provide compliant documents, and hence there

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<sup>30</sup> The non-modifiable standard terms and conditions that the retail sellers omitted is considered an incident.

<sup>31</sup> E-5143 at 17-18.

<sup>32</sup> D.22-01-025 at Conclusion of Law 2.

is no reasonable deficiency or violation end date for Commission to base its penalty assessment. In this case, picking an arbitrary date to base the penalty amount will lead to penalties in the order of tens of thousands or more and would not well serve the core mandate of the RPS program, which is to promote long-term RPS-eligible resource procurement, as intended by the Commission. Therefore, we find it reasonable to assess a penalty of \$500 for each retail seller on an incident basis and not tie the penalty computation to the number of days the violations occurred.

#### **5. Adherence to Rules in Future Filings**

Our penalty assessment of \$500 for each retail seller is minimal but should not be taken lightly. Under the RPS program rules, contracts with missing non-modifiable STCs violate regulatory requirements. It is essential that all contracts undergo thorough review and verification to ensure compliance with RPS requirements and prevent recurrence in future filings. Retail sellers with repeat omissions may face higher penalties in future filings consistent with the Commission's enforcement policy.<sup>33</sup>

RPS compliance requirements include several non-modifiable terms and conditions. These typically involve aspects such as the eligibility of renewable energy resources, the calculation of and reporting of renewable energy generation, and the procurement obligations imposed on retail sellers. These STCs are crucial for ensuring consistent and effective implementation of the RPS program. Therefore, the Commission strongly encourages all retail sellers to review their RPS contracts to ensure that all required STCs are included.

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<sup>33</sup> See Resolution M-4846.

**6. Payment of Penalty**

Each retail seller must pay the penalty, by a certified check payable to the California Energy Commission, for the credit of the state Electric Program Investment Program Charge (EPIC), in the amount of \$500. Payments should be submitted to the California Energy Commission, 715 P Street, MS-2, Sacramento, CA 95814 and payment should reference “RPS penalty payment.” A letter confirming the payment should also be sent to Energy Division Deputy Executive Director, consistent with the process described in D.19-08-007.

**7. Summary of Public Comment**

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the “Public Comment” tab of the online Docket Card for that proceeding on the Commission’s website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

There are no relevant public comments on the Docket Card of this proceeding.

**8. Comments on Proposed Decision**

The proposed decision of Administrative Law Judge Nilgun Atamturk in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed on October 1, 2024, by the Alliance for Retail Energy Markets, in support of the proposed decision. No reply comments were filed. No changes have been made to the proposed decision.

**9. Assignment of Proceeding**

John Reynolds is the assigned Commissioner and Nilgun Atamturk and Rajan Mutialu are the assigned Administrative Law Judges in this proceeding.

### **Findings of Fact**

1. CleanPowerSF filed its Final RPS Compliance report for Compliance Period 2017-2020 (Compliance Period 3) on March 3, 2023.

2. Energy Division notified CleanPowerSF on April 17, 2024, that CleanPowerSF was found to be out of compliance with the RPS program requirements and imposed a penalty of \$10,010,909.

3. Energy Division clarification, dated May 6, 2024, explained that CleanPowerSF's RPS Compliance report included 269,343 RECs from contracts deemed deficient due to missing non-modifiable standard terms and conditions, resulting in an overall procurement quantity requirement deficit of 200,218 RECs.

4. CleanPowerSF's contract did not include all the required non-modifiable RPS standard terms and conditions.

5. Direct filed its Final RPS Compliance report for Compliance Period 2017-2020 (Compliance Period 3) on March 1, 2023.

6. Energy Division notified Direct on April 18, 2024, that Direct was found to be out of compliance with the RPS program requirements and imposed a penalty of \$5,927,057.

7. Energy Division clarification, dated May 6, 2024, explained that all of Direct's 119,042 RECs from the five contracts were ineligible to count towards Direct's Compliance Period 3 RPS procurement obligations, resulting in an overall PQR deficit of 118,541 RECs.

8. Direct's contract did not include all the required non-modifiable RPS standard terms and conditions.

9. Pilot filed its Final RPS Compliance report for Compliance Period 2017-2020 (Compliance Period 3) on March 3, 2023.

10. Energy Division notified Pilot on April 18, 2024, that Pilot's RPS Compliance report included RECs from contracts deemed deficient due to missing non-modifiable standard terms and conditions, resulting in an overall procurement quantity requirement deficit of 39,514 RECs.

11. Pilot was found to be out of compliance with the RPS program requirements and imposed a penalty of \$1,014,667.

12. Pilot's contract did not include all the required non-modifiable RPS standard terms and conditions.

13. The CEC's RPS 2017-2020 Retail Sellers Procurement Verification Final Report was issued on January 31, 2023.

### **Conclusions of Law**

1. CleanPowerSF, Direct and Pilot purchased and retired a quantity of eligible, compliant RECs needed to meet their RPS obligations for Compliance Period 3.

2. Since the Commission is not disallowing the retail sellers' procurement amounts, the waiver requests are moot.

3. CleanPowerSF's, Direct's and Pilot's Final Compliance Reports were out of compliance with our regulatory requirements as certain RPS contracts failed to contain all the required standard terms and conditions in their contract terms.

4. It is reasonable for each retail seller, CleanPowerSF, Direct and Pilot Power, to pay a penalty of \$500 to the CEC for the credit of the EPIC program.

### **O R D E R**

**IT IS ORDERED** that:

1. CleanPowerSF is penalized \$500 for failing to comply with the Renewables Portfolio Standard contracting and reporting requirements.

2. Direct Energy, LLC is penalized \$500 for failing to comply with the Renewables Portfolio Standard contracting and reporting requirements.
3. Pilot Power Group, LLC is penalized \$500 for failing to comply with the Renewables Portfolio Standard contracting reporting requirements.
4. Within 30 days of the effective date of this order, CleanPowerSF, Direct Energy LLC, and Pilot Power Group, LLC must each pay the assessed penalty, by a certified check payable to the California Energy Commission, for the credit of the state Electric Program Investment Charge program.
5. Payments must be submitted to the California Energy Commission, 715 P Street, MS-2, Sacramento, CA 95814 and payment should reference “RPS penalty payment.” A letter confirming the payment must also be sent to Energy Division Deputy Executive Director.
6. Rulemaking 24-01-017 remains open.

This order is effective today.

Dated October 17, 2024, at Sacramento, California.

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

Commissioner Matthew Baker  
recused himself from this agenda  
item and was not part of the quorum  
in its consideration.