

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-482
Administrative Law Judge Division
[Date]

RESOLUTION

RESOLUTION ALJ-482: Resolving K.23-11-015, the Appeal of Citation No. E-4195-0143 by Silicon Valley Clean Energy Authority.

SUMMARY

This resolution resolves Silicon Valley Clean Energy Authority's appeal of Citation Number E-4195-0143 issued by the California Public Utilities Commission's Consumer Protection and Enforcement Division. Citation E-4195-0143 cites and fines Silicon Valley Clean Energy Authority for failing to procure certain of its June, July, August, and September 2023 Year-Ahead System Resource Adequacy requirements and for failing to file its Year-Ahead System Resource Adequacy compliance filing at the time and in the manner required. This Resolution denies the appeal. This proceeding is closed.

BACKGROUND AND PROCEDURAL HISTORY

On October 31, 2022, Silicon Valley Clean Energy Authority¹ (SVCE) filed its year-ahead system local and flexible resource adequacy² (RA) compliance filing. On December 29, 2022, SVCE filed a revised compliance filing. On February 13 and 14, 2023, the California Public Utilities Commission's (Commission) Energy Division sent deficiency notices to SVCE indicating deficiencies for June, July, August, and September RA and

¹ SVCE is a joint powers agency whose members include Santa Clara County and the cities of Campbell, Cupertino, Gilroy, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Saratoga and Sunnyvale.

² This citation appeal only focuses on Year-Ahead System RA deficiencies. Therefore, all references in this Resolution to RA refer solely to Year-Ahead System RA.

setting a February 21, 2023 deadline to cure deficiencies (Cure Period) and to provide supporting documentation for any additional RA procured. SVCE's February 21, 2023 filing identified newly procured RA as pending.

The Commission's Consumer Protection and Enforcement Division (CPED) requested an update from SVCE on April 18, 2023, stating that the revised February 21, 2023 filing did not show whether SVCE had cured its deficiencies and requested supporting documentation. The evidentiary record does not include a response from SVCE to this request. On June 21 and 22, 2023, CPED requested an update from SVCE. SVCE responded that it was unable to cure its deficiencies. On July 18, 2023, CPED requested supporting documentation from SVCE for RA that SVCE reported as pending in its February 21, 2023 filing. SVCE immediately responded by providing two RA procurement contracts.³

On October 27, 2023, CPED issued Citation E-4195-0134 to SVCE in the amount of \$3,012,248 for:

1. Failure to file a RA compliance filing at the time and in the manner required;
2. Failure to cure the deficiencies within five business days from the date of notification by the Commission's Energy Division; and
3. Remedying deficiencies more than five business days from the date of the Commission's Energy Division's notification or failure to remedy at all.

On November 27, 2023, SVCE filed a timely Notice of Appeal. On December 11, 2023, CPED filed a compliance filing as required by ALJ-377.

On January 24, 2024, the assigned ALJ issued a ruling requesting the parties file a joint response to several questions including 1) the legal and factual underpinnings of the appeal; 2) whether evidentiary hearings would be necessary to resolve factual issues; and 3) the proposed schedule for the proceeding. The parties filed their joint response on February 16, 2024.

The assigned ALJ issued a Ruling Setting Scope and Schedule on March 7, 2024, that identified two issues:

1. Does the citation correctly identify SVCE's deficiencies in meeting its RA

³ CPED reports that the two contracts had a trade date of February 17, 2023, which was prior to the February 21, 2023 deadline; however, the contracts were not executed until March 23, 2023.

obligations?

2. Was the citation penalty for SVCE's system RA deficiencies correctly calculated and lawfully assessed based on the five-factor test identified in Decision (D.) 98-12-075?

On June 28, 2024, each party served prepared testimony. On July 15, 2024, the parties served reply testimony.

On July 29, 2024, the parties filed a joint response indicating that evidentiary hearings would not be necessary. The parties also proposed a modified briefing schedule, which the assigned ALJ approved in a ruling issued on August 9, 2024.

On September 20, 2024, the parties submitted opening briefs. On October 3, 2024, CPED filed a Notice of Motion and Motion of Judicial Notice of Officially Noticeable Information. On October 11, 2024, the parties submitted reply briefs, at which time the record was closed.

On February 12, 2025, the assigned ALJ issued a ruling granting the parties' motions to admit evidence into the evidentiary record, motions for leave to file confidential exhibits and briefs under seal and denied CPED's motion for Judicial Notice.

On June 9, 2025, SVCE filed a Motion to Take Official Notice of Pacific Gas and Electric Company's Advice Letter 7578-E. On June 25, 2025, CPED filed a response to SVCE's motion.

STANDARD OF REVIEW

Applicable Rules and Decisions on RA Enforcement and Citation Appeals

Public Utilities (Pub. Util.) Code Section 380 governs California's RA 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 D.05-10-042, the Commission adopted a penalty regime for load-serving entities (LSEs) that fail to procure sufficient RA.⁴ 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 an appeal process for citation appeals. ALJ-377 applies to this appeal. Under Resolution ALJ-377, CPED has the burden to prove by a preponderance of the evidence the case supporting issuance of a citation. Once 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."⁵

Under D.98-12-075, the Commission employs five factors to determine 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.⁶ The five-factor test is applicable in reviewing this citation appeal.

DISCUSSION

1. Citation For Year Ahead System RA Deficiencies

The parties agree that the citation correctly identified SVCE's 2023 RA deficiencies and that the citation correctly applied the RA penalty schedule to those deficiencies when calculating the penalty amount.⁷ Under Resolution ALJ-377, CPED has met its initial

⁴ D.05-10-042 at Conclusion of Law 21.

⁵ ALJ-377, Appendix A.

⁶ D.98-12-075.

⁷ Joint Response of the Consumer Protection and Enforcement Division and Silicon Valley Clean Energy Authority to Administrative Law Judge's January 24, 2024, Ruling, filed February 16, 2024, at 4.

burden; therefore, the burden of proof shifts to SVCE to demonstrate that a violation did not occur and the citation should not issue, or that the amount of the penalty is inappropriate. SVCE also has the burden to prove any affirmative defenses.

2. Affirmative Defense: Impossibility of Procuring Summer 2023 RA

SVCE asserts that it had secured sufficient summer 2023 RA to meet its June, August and September 2023 RA through various long term power purchase agreements well before the October 31, 2022 RA compliance filing deadline.⁸ Due to unforeseen circumstances, however, several projects were delayed in their commercial operation dates (COD).⁹ SVCE claims that the COD delivery delays left SVCE without sufficient RA for the months of June through September 2023.¹⁰ Thus, commencing in February 2022, SVCE sought to purchase RA in the market, but given the tight RA market, it was impossible to procure the necessary RA at any price.¹¹

SVCE seeks to distinguish its appeal from other RA citation appeals. “Contrary to recent enforcement cases raising the impossibility defense, evidence in this case shows that once notified about the commercial delays, SVCE pursued all opportunities to purchase additional RA, making every possible effort, but there were no resources available on the market.”¹²

Several courts have looked at the issue of “impossibility” primarily related to contract performance. Factual impossibility refers to the physical inability to perform an act; whereas, legal impossibility refers to the inability to perform an act because it is illegal or due to conflicts between federal and state law. Impossibility can also refer to the inability to perform because a condition precedent to performance has not been satisfied.¹³ Although contractual interpretation is not at issue in citation appeal because SVCE is not in breach of contract but in violation of a regulatory duty, we borrow from the judicial precedents of impossibility in the contractual interpretation setting because there is no caselaw that applies impossibility to regulatory performance.

⁸ Exhibit SVCE-01 at 2.

⁹ Exhibit SVCE-02 at 6.

¹⁰ Exhibit SVCE-01, attachment A.

¹¹ Exhibit SVCE-02 at 13-14 and 16.

¹² SVCE Opening Brief at 2.

¹³ Impossibility Definition, Black’s Law Dictionary, (12th ed. 2024).

SVCE's arguments most closely resemble factual or physical impossibility-the inability to procure RA because it was simply not available. SVCE asserts that the cost of RA was not the impediment, only the unavailability of RA to purchase during the period following notification of the COD delays from late April 2022 through the compliance date of October 31, 2022.¹⁴

CPED notes that limiting the time period to five months is a fiction because RA for the 2023 summer months was available for several years prior to the reporting deadline. For purposes of this citation appeal, the Commission credits that SVCE believed it had procured sufficient RA to meet its regulatory obligations for the months of June, August and September 2023, prior to receiving notification of the COD delays.¹⁵ Therefore, for the purposes of this affirmative defense, we consider the applicable period for evaluating impossibility to procure June, August, and September 2023 RA as April 2022, through February 21, 2023 (Energy Division's deadline for SVCE to cure any deficiencies). For the July 2023 RA requirements, however, SVCE has acknowledged that it had not procured sufficient July 2023 RA even prior to the COD delays.¹⁶ Therefore, we consider the applicable time period as anytime prior to February 21, 2023.

SVCE issued requests for offers (RFOs) in 2022 before the October 31, 2022 reporting deadline,¹⁷ as well as after the reporting deadline.¹⁸ SVCE bid into other LSE solicitations and IOU solicitations before the October 31, 2022 deadline,¹⁹ as well as after the deadline.²⁰ As detailed below, however, the evidence shows that SVCE did not in fact pursue all opportunities to purchase additional 2023 RA, and that there were untapped RA resources available for procurement for the 2023 months of June, July, August and September (Summer Months).

¹⁴ From April 21, 2022, through June 29, 2022, SVCE was notified about the delay in four projects. SVCE-02-C at 7-10.

¹⁵ Exhibit SVCE-02 at 16.

¹⁶ Exhibit SVCE-02 at 10.

¹⁷ Exhibit SVCE-02 at 14.

¹⁸ *Id.* at 15.

¹⁹ *Id.* at 14.

²⁰ *Id.* at 15, 16.

a. Third-Party Bids into SVCE's RFO Solicitations in the 2022 Procurement Timeframe

One particular bid submitted in response to SVCE's late February 2022 RFO, offered 2023 RA for each of the Summer Months. Although the broker sought to clarify the terms, and all of the broker's questions were answered by the bidder, SVCE asserts that it could not accept this bid because the terms of the offer were unclear.²¹ The Commission observes that while this particular offer may not have fulfilled all of SVCE's summer 2023 RA needs, it would have partially filled SVCE's 2023 Summer Months RA requirements and therefore, lowered SVCE's overall RA deficiencies. The evidence shows that SVCE's broker followed up with SVCE on March 1, 2022, suggesting that SVCE and the third-party meet to discuss the terms of the offer, but SVCE declined saying simply that because the terms were unclear, SVCE was not interested in the bid.²²

SVCE asserts that its procurement staff who led the February 2022 RFO no longer works with SVCE, but that SVCE's records show numerous efforts via phone and email to determine the terms of the offer.²³ The evidence in this proceeding, however, does not substantiate that assertion. There is no evidence that SVCE sought to clarify the terms of the third-party offer, only the aforementioned email chain in which SVCE summarily declines to move forward to clarify the terms of the offer.

Another third-party entity submitted an offer in May 2022, after SVCE learned of certain COD delays, to sell Summer Months 2023 RA.²⁴ SVCE explained that it does not have many records on this particular transaction, including any rejection of the offer, but to the best of SVCE staff's recollection, the product, price and terms were unclear.²⁵ On June 9, 2022, SVCE's broker suggested that SVCE respond to the offer with a price. SVCE did not respond to the broker's email.²⁶ Here too, the evidence shows that SVCE failed to engage further to clarify the terms of the third-party entity's offer for available Summer Months RA capacity.

²¹ Exhibit SVCE-03-C at 8.

²² Exhibit CPED-02 at Exhibit 30.

²³ Exhibit SVCE-03-C at 8.

²⁴ Exhibit CPED-01 at 17.

²⁵ Exhibit SVCE-03-C at 9.

²⁶ Exhibit SVCE-09-C.

In summary, the evidence shows that in February and May 2022, there were two third-party entities that offered to sell SVCE Summer Months 2023 RA. In both instances, the evidence shows that SVCE declined to clarify the offer terms with these two entities. The Commission finds that by failing to actively pursue two offers for available summer 2023 RA, SVCE has failed to meet its burden to prove that it was impossible to procure summer RA capacity.

b. Third-Party LSE Solicitations

SVCE explained that in addition to issuing its own RFOs, it bid into other LSE's solicitations. CPED, however, identified at least two solicitations offering summer 2023 RA held by the Investor Owned Utilities (IOU) into which SVCE failed to bid.²⁷

SVCE did not bid into Southern California Edison Company's (SCE) February 6, 2023 solicitation. SVCE contends that it was unaware of the solicitation because the notice was quarantined by SVCE's email monitoring system and, as such, was not delivered to necessary internal recipients on the procurement team.²⁸ SVCE contends, therefore, that because it had no notification of the RFO, SVCE staff could not have reasonably bid into the RFO. While this RFO occurred after the October 31 compliance deadline, as discussed above, Energy Division gave SVCE until February 21, 2023, to cure deficiencies. Here too the availability of Summer Months 2023 RA defeats the impossibility affirmative defense.

SVCE also did not bid into San Diego Gas and Electric Company's (SDG&E) September 30, 2021 solicitation because it states it was unaware of the solicitation.²⁹ SVCE notes that this solicitation occurred prior to learning of the project delays that left SVCE with an RA deficit. Even at the time of the solicitation, however, SVCE admits that it had not procured sufficient RA to meet the July 2023 RA requirements.

SVCE's assertion that it was unaware of both SDG&E's and SCE's solicitations are unpersuasive because 1) SVCE acknowledges that it had dedicated in-house procurement staff; 2) SVCE regularly uses energy brokers to facilitate its RA procurement, brokers likely well-versed in RA market availability; and 3) IOU

²⁷ Exhibit CPED-01 at 7.

²⁸ Exhibit SVCE-03 at 9.

²⁹ *Id.* at 10.

solicitation information is available on the respective IOU websites. Further, SVCE launched service in 2017³⁰ and thus had experience complying with the Commission's RA regulatory requirements for several years prior to the issuance of this citation. The Commission finds that by failing to actively pursue and bid into two available IOU solicitations for summer 2023 RA, SVCE failed to meet its burden to prove that it was impossible to procure 2023 RA for the Summer Months.

Lastly, particularly with respect to July 2023 RA procurement, the evidence also shows that SVCE did not exhaust, and in some cases did not even tap into, opportunities to procure available July 2023 RA. For example, SVCE did not bid into several LSE RFOs prior to 2022,³¹ and rejected a majority of the offers from SVCE's February 2020 RFO, all of which included summer 2023 RA.³² SVCE also failed to pursue summer 2023 RA capacity from bilaterally negotiated offers.³³ The Commission finds that SVCE has failed to prove that it was impossible to procure July 2023 RA.

CONCLUSION

SVCE asserts that after learning of the COD delays in several of its long-term power purchase agreements, it "pursued all opportunities to purchase additional RA, making every possible effort, but there were no resources available on the market,"³⁴ and SVCE went beyond what was "commercially reasonable"³⁵ to fulfill its regulatory obligations.³⁶ SVCE simultaneously and incongruously argues impossibility while failing to pursue third-party offers for available Summer Months 2023 RA and pursue and bid into all IOU and LSE solicitations. RA capacity was available during the relevant timeframe, but SVCE did not pursue and follow up on the relevant available RA capacity. Accordingly, the evidence does not establish factual or physical impossibility.

³⁰ Exhibit SVCE-02 at 2.

³¹ Exhibit CPED-01-C at 10, lines 17-20.

³² *Id.* at 10, lines 22-34.

³³ *Id.* at 11, lines 5-15.

³⁴ SVCE Opening Brief at 2.

³⁵ *Id.*

³⁶ It should be noted that "'commercially reasonable efforts is not the relevant legal standard for a citation appeal.'" D.25-04-043 at 6.

3. Citation For Failure to File Year Ahead System RA compliance filing at the Time and in the Manner Required

The citation includes a penalty for failure to file the year-ahead system RA compliance filing at the time and in the manner required. LSEs must file a compliance filing for year-ahead system RA by October 31, of each year. LSEs must demonstrate that they have procured 90% of the total forecasted loads plus planning reserves for the summer months May through September.³⁷

SVCE filed its RA compliance filing as required on October 31, 2022, showing deficiencies for summer 2023 RA. SVCE revised its 2023 Year Ahead System, Local and Flexible Resource Adequacy Requirement on December 29, 2022.³⁸ Energy Division then gave SVCE until February 21, 2023, to cure any deficiencies. SVCE was not able to fully cure RA deficiencies during the Cure Period; however, it was able to increase its RA position.³⁹

CPED followed up on SVCE's RA procurement efforts on April 18, June 22 and 23, 2023. In those communications, CPED asked for supporting documentation for any additional RA procured. On July 18, 2023, CPED specifically requested supporting documentation for the June procurement that was identified as pending in SVCE's February 21, 2022 filing. SVCE responded immediately and provided copies of the applicable contracts.⁴⁰

Upon receipt of the supporting documentation, the contracted RA capacity was greater than that reported on February 21, 2023. SVCE explained that on February 21, 2023, it only had rights for a portion of the contracted amount. It acquired full rights by March 2, 2023. SVCE claims it was simply an oversight that it did not include the full contracted volume in its February 21, 2023 filing.⁴¹

³⁷ *2023 Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings*, California Public Utilities Commission, September 30, 2022, at 16.

³⁸ CPED Opening Brief at 2; Exhibit CPED-01.

³⁹ Exhibit SVCE-02 at 16.

⁴⁰ Exhibit SVCE-03 at 10.

⁴¹ Exhibit CPED-02-C (Appendix A, Exhibit 22).

SVCE provided the supporting documentation nearly six months following the Cure Period. SVCE notes that the Commission's Energy Division did not request a complete refiling and that it corrected the error on the same day that the Commission requested the supporting contracts. SVCE equates the error of failing to submit the contracts to that of a typographical error.⁴² Under the RA Guidelines, minor errors are "simply typographical or numerical errors that do not affect compliance..."⁴³

CPED claims that SVCE should have refiled the compliance filing in its entirety when SVCE submitted the supporting contracts. CPED contends that it was not merely omission of the contracts, but that the contracts included greater RA capacity than was disclosed in the February 21, 2023 filing. The difference in RA resources required a complete refiling.

The RA Guidelines state that "[m]inor typographical or numerical inaccuracies that do not affect compliance and do not require the procurement of additional capacity can be made by submitting a corrected template to replace the original, with the changes described in the cover letter."⁴⁴ Conversely, errors that may affect compliance are "[s]ubstantive errors [that] must be corrected via a complete refiling of the RA Filing."⁴⁵ "Additional procurement (even if the LSE already controls the capacity but not (sic) has made it available to CAISO via an RA filing) must be demonstrated via a corrected template and the LSE is to ensure that a revised supply plan documenting that additional procurement is filed with the CAISO by the supplier."⁴⁶ "Examples of errors that may affect compliance include omitting resource availability. . ."⁴⁷

The Commission finds that SVCE's error was not merely failure to include the supporting documentation related to its February 21, 2023 filing. The error included misstating the volume of the RA resources. The Commission credited SVCE with the additional RA resources provided for in the contracts, but the change in quantity required SVCE to submit a revised filing.

⁴² SVCE Reply Brief at 18.

⁴³ RA Guidelines, Appendix A at 58.

⁴⁴ RA Guide, Appendix A at 57.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

The Commission finds that failing to submit a timely revised filing resulted in a substantial, not minor, error. The Commission finds that CPED has met its initial burden to prove the case supporting issuance of a citation. Therefore, the burden of proof shifts to SVCE to demonstrate that a violation did not occur and the citation should not issue, or that the amount of the penalty is inappropriate.

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

We next consider the five factors discussed in D.98-12-075, namely (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. These five factors aid in assessing the appropriate level of a fine. We address each factor below for each citation.

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.⁴⁸

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].⁴⁹

⁴⁸ D.98-12-075 at 54.

⁴⁹ *Id.* at 55.

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.”⁵⁰

a. Citation for RA Deficiencies

“[T]he RA program was established in the wake of the 2000 Western energy crisis and was designed to ensure that LSEs secure sufficient electrical capacity to maintain grid reliability.”⁵¹ SVCE argues that its “deficiency is economic in nature and not severe, weighing in favor of no penalty or reduced penalty.”⁵² We disagree and find that an LSE’s failure to procure sufficient RA to meet the Commission’s regulatory requirements is a severe offense with the potential to threaten the reliability of the electrical grid.

As discussed in section 1, above, the evidence shows that SVCE failed to pursue and bid into two IOU sponsored solicitations, and failed to actively pursue at least two third-party offers to sell Summer Months 2023 RA. SVCE attributes these failures to a faulty email system, unclear offer terms, and simply not knowing about solicitations. SVCE contends that the two third-party offers were not actually offers because the terms were not clear such that SVCE could simply accept the offers.⁵³ But this argument defeats SVCE’s argument that its efforts were above and beyond reasonable efforts. In fact, it is unreasonable not to follow up to clarify the terms with the two third-parties that took the affirmative step to bid into SVCE’s solicitation with Summer Months 2023 RA to sell.

We find that SVCE’s failure to procure sufficient summer 2023 RA harmed the regulatory process and thus must be accorded a high level of severity.

b. Citation for Time and Manner Violation

As discussed in section 3, above, CPED followed up on SVCE’s RA procurement efforts on April 18, June 22 and 23, 2023. CPED requested supporting documentation for any

⁵⁰ *Id.*

⁵¹ Resolution ALJ-424 at 8.

⁵² SVCE Opening Brief at 11.

⁵³ SVCE’s Comments on Draft Resolution ALJ-482 at 6.

additional RA procured. SVCE did not reply to the April 18, 2023 email. On July 18, 2023, CPED specifically requested supporting documentation for the February procurement that was identified as pending in SVCE's February 21, 2022 filing. SVCE responded immediately and provided copies of the applicable contracts.⁵⁴ The contracts included greater RA capacity for June 2023 than was previously reported.

Although stated above, it bears repeating here that "[a]dditional procurement (even if the LSE already controls the capacity but not (sic) has made it available to CAISO via an RA filing) must be demonstrated via a corrected template and the LSE is to ensure that a revised supply plan documenting that additional procurement is filed with the CAISO by the supplier."⁵⁵ "Examples of errors that may affect compliance include omitting resource availability. . ." ⁵⁶

We find that SVCE's failure to file its RA compliance in the time and manner required was a substantial error that harmed the regulatory process by underestimating the RA procured for June 2023. Accordingly, this error must be accorded a high level of severity.

THE ENTITY'S CONDUCT

In evaluating SVCE's conduct, 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."⁵⁷ In considering a utility's actions to prevent a violation, the Commission states that "[p]rudent practice requires that all public utilities take reasonable steps to ensure compliance with Commission directives" and that the Commission "will consider the utility's past record of compliance with Commission directives."⁵⁸

⁵⁴ Exhibit SVCE-03 at 10.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ D.98-12-075 at 56.

⁵⁸ *Id.*

Under this factor, the Commission has distinguished a utility's conduct as "deliberate" versus "inadvertent" wrong-doing, stating that "[d]eliberate, as opposed to inadvertent wrong-doing, will be considered an aggravating factor."⁵⁹

a. Citation for RA Deficiencies

SVCE argues that its deficiencies were the result of project delays over which SVCE had no control. SVCE further asserts that "before, during and after the violation, [SVCE's conduct] was nothing short of exemplary." "SVCE procured early and often, and made robust efforts to make up shortfalls when they were presented, but insufficient resources were available."⁶⁰

SVCE argued that although it could not purchase sufficient RA in the months before the RA compliance deadline, through its tenacious efforts, it "was able to procure sufficient resources by the month ahead, such that SVCE actually provided adequate resources when the grid needed them."⁶¹

In considering SVCE's conduct to "prevent the violation" under this factor, the evidence shows that 1) SVCE in fact bid into several solicitations, issued its own RFOs, and engaged in the broker market; 2) SVCE failed to actively pursue two third-party offers to sell Summer Months 2023 RA and failed to bid into two IOU solicitations that included summer 2023 RA; and 3) even before learning of the project delays affecting certain of SVCE's RA contracts, SVCE had not procured sufficient RA to meet its July 2023 RA requirements—a gap that, SVCE should have been working to fill prior to spring 2022.

SVCE contends that its procurement violation was "ultimately inadvertent."⁶² With respect to the two IOU solicitations that SVCE failed to bid into to, SVCE explains that it was unfortunate and inadvertent that SVCE missed the email solicitation for one of the solicitations,⁶³ and that SVCE chose not to bid into SDG&E's solicitation because it occurred several months before SVCE knew of commercial delays impacting its position. SVCE made this choice knowing that it still had deficiencies in its July RA

⁵⁹ *Id.* at 57.

⁶⁰ SVCE Opening Brief at 11.

⁶¹ *Id.*

⁶² SVCE Comments on Draft Resolution ALJ-482 at 5.

⁶³ *Id.* at 7.

procurement. Weighing the evidence under this factor, the Commission finds that SVCE deliberately did not take “reasonable steps to ensure compliance with Commission directives” to prevent the violation.⁶⁴

SVCE claims that one of the IOU solicitations was detained in its email system resulting in inadvertent failure to bid into that solicitation. Even if we were to agree that the email snafu was inadvertent error, it does not explain why SVCE did not pursue the other RA sources previously discussed. Therefore, we find that SVCE’s failure to procure sufficient RA resources was deliberate. SVCE’s conduct is an aggravating factor.

Also under this factor, we consider a utility’s “past record of compliance with Commission directives.”⁶⁵ CPED points out that SVCE has been cited for RA violations for the last three years (SVCE E-4195-0111, 2021 and E-4195-0120, 2022).⁶⁶ SVCE explained that the 2022 violations were minor and were corrected immediately. One of the violations resulted from “staff incorrectly copying and pasting data from the Cost Allocation Mechanism-Reliability Must Run spreadsheet that Energy Division Staff provided to LSEs.”⁶⁷ SVCE provided no explanation or for its 2021 violation. The Commission further addresses these past violations in the last factor, below.

b. Citation for Time and Manner Violation

SVCE argues that its failure to provide the two contracts for June RA was an inadvertent error. Once CPED requested the supporting documentation on July 18, 2023, SVCE responded immediately by providing copies of the contracts that same day. As noted above, the contracts showed additional 2023 RA capacity from that shown on the February 21, 2023 filing.

There were, however, email communications prior to July 18, 2023, in which CPED requested supporting documentation. On April 18, 2023, CPED expressly asked if SVCE had cured its deficiencies and if so to provide valid proof “including, but not limited to the signed contract, along with the revised showing” along with a copy of the corrected

⁶⁴ See D.98-12-075, 1998 Cal. PUC LEXIS 1018, at *57.

⁶⁵ D.98-12-075 at 56.

⁶⁶ CPED Opening Brief at 14.

⁶⁷ SVCE Reply Brief at 6.

template.⁶⁸ Instead of responding with the contracts or a revised template refiled as required by the RA Guidelines, the evidence shows that SVCE did not reply at all. CPED followed up on June 21, 2023, and again on June 22, 2023, at which time, SVCE responded that SVCE had not cured the deficiency for system RA during the Cure Period.⁶⁹ SVCE has not established that its failure to respond to a regulatory agency regarding RA compliance obligations was an inadvertent error, nor does it show that SVCE sought to prevent a violation.

We find that by deliberately not responding to CPED in April 2023, SVCE did not take “reasonable steps to ensure compliance with commission directives” to prevent the violation. Accordingly, the SVCE’s conduct is an aggravating factor.

THE ENTITY’S 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.”⁷⁰ The Commission “intends to adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility’s financial resources.”⁷¹

SVCE did not raise the issue of inability to pay the fines or that the fines will impact its ability to provide safe, reliable or affordable service. To the contrary, SVCE stated that “SVCE’s policy has been to take a strict approach to compliance with RA and other procurement obligations. SVCE’s general strategy for procurement of all products, including (RA), is to- put simply-meet all compliance obligations regardless of the costs.”⁷²

Because SVCE does not argue that it lacks the financial resources to pay the penalties, this factor is neither a mitigating nor aggravating factor in our analysis for either the deficiency citation or the time and manner citation.

⁶⁸ Exhibit CPED-04 at Exhibits 6, 7, 8, 9, 10 and 11.

⁶⁹ *Id.* at Exhibits 10 and 11.

⁷⁰ *See* D.98-12-075, Appendix A at 10.

⁷¹ *Id.*

⁷² SVCE Opening Brief at 5: *See also* Exhibit SVCE-01 at 2.

THE 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.”⁷³

Citing D.15-04-024, SVCE limited this factor to address “the amount of the fine in relation to prior commission decisions,”⁷⁴ and dismisses this factor as not applicable in this case.⁷⁵ We disagree with limiting this factor to a mere evaluation of the amount of the fines in prior decisions and instead evaluate this appeal in relationship to other RA citation appeal Resolutions issued by the Commission.

Several recent Commission Resolutions have addressed the arguments raised by SVCE in this appeal--namely that of impossibility to procure sufficient summer RA in tight RA markets. These recent Commission Resolutions declined to excuse non-compliance with RA requirements based on market conditions.⁷⁶ “[T]ight market conditions alone are not reason to excuse compliance with RA compliance.”⁷⁷ 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.”⁷⁸

In nearly all of the recent Commission Resolutions, the Commission has upheld the citations finding that the appellant failed to procure sufficient RA capacity to meet its

⁷³ D.98-12-075 at 60. Note that this is actually the fourth factor in D.98-12-075, and the Totality of the Circumstances in Furtherance of the Public Interest is the fifth factor, but in this decision, we choose to analyze the factors in the same order as other recent decisions.

⁷⁴ SVCE Opening Brief at 8.

⁷⁵ *Id.* at 10.

⁷⁶ See Resolution ALJ-442, *Resolves the Appeal K.21-03-005 of Citation E-4195-0098 by San Diego Community Power*; 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*.

⁷⁷ Resolution ALJ-406 at 3.

⁷⁸ Resolution ALJ-442 at 10, quoting Resolution ALJ-424 at 16.

regulatory obligations. The Commission also upheld penalties that followed the penalty schedule in Resolution E-4195, as amended.

SVCE sought to distinguish this citation appeal from other citation appeals by holding itself up as more proactive than other appellants and not rejecting any bids based on costs. However, as discussed in section 1, while SVCE may not have rejected bids based on cost alone, SVCE did not fully exhaust opportunities to procure summer 2023 RA.

In its comments on this proposed resolution, SVCE cites the rehearing decision (D.25-04-043) in K.21-11-018 (Shell Energy Proceeding) that reduced the penalty for a citation issued to Shell Energy North America (US), L.P. d/b/a Shell Energy based on the Commission's finding of mitigating factors. SVCE urges the Commission to find mitigating circumstances in this citation appeal as well.⁷⁹ SCVE points to significant efforts to procure 2023 Summer Months RA and dismisses its failure to take advantage of, or at least inquire into, available 2023 Summer Months RA as inadvertent error.

Significant factual differences exist between this proceeding and the Shell Energy Proceeding. First, Shell had requested a waiver for its 2020 year-ahead local RA, which was rejected because Shell failed to issue an RFO. The failure to obtain a waiver was a significant factor in the analysis in Resolution ALJ-463. Local RA waivers are not at issue in the current proceeding.

Second, SVCE was cited both for a time and manner violation and for failure to comply with the year-ahead RA procurement requirements. There was no time and manner violation in the Shell case.

Third, Shell Energy's RA deficiencies were specific to local RA capacity in the Stockton Local Resource Area (SLRA) and the evidence in that case demonstrated adverse market conditions in the local RA market in the SLRA. SVCE's testimony in the current proceeding likewise indicates that the RA market was tight after it received notification of the COD delays. CPED, however, provided evidence that year ahead RA was available, but that SVCE failed to pursue bids it received from its request for offers.⁸⁰

The fourth and the most important difference between the two cases, however, is the lack of evidence that Shell Energy deliberately rejected bids. "In the absence of evidence in the record that Shell's failure to comply with our requirements was deliberate and

⁷⁹ See SVCE's Comments on Draft Resolution ALJ-482.

⁸⁰ CPED-01-C at 17.

that Shell could have fulfilled its requirements but did not (for example, by deliberately rejecting bids), the evidence slightly favors penalty mitigation.”⁸¹ SVCE claims that it also did not reject any offers. It simply chose not to clarify two of the offers it received in response to its RFO.⁸² In other words, because the terms of the offers were not clear, they could not be accepted. SVCE’s choice not to clarify or pursue the two third-party bids was a deliberate decision and can be equated to rejecting the bids.

SVCE has provided no Commission precedent that would justify adjusting the RA citation penalty downward or upward, or otherwise deviate from the RA penalty schedule, for either an RA deficiency or for a time and manner violation. Commission precedent addressing RA citation appeals favors affirming the citation penalty based on the penalty schedule.

THE TOTALITY OF THE CIRCUMSTANCES IN THE PUBLIC INTEREST

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.⁸³

SVCE argues that “[c]ommercial delays and impossibility are circumstances outside of SVCE’s control.”⁸⁴ “Punishing SVCE for failing to obtain resources that were not available due to commercial delays, or for being unable to procure resources on short notice in a difficult market, makes little sense and advances no identifiable public interest.”⁸⁵ SVCE explained that it did not obtain any unlawful benefits through its conduct, nor were its actions deliberate.⁸⁶ CPED contends that SVCE in fact benefited

⁸¹ D.25-04-043 at 8.

⁸² SVCE Comments on Draft Resolution ALJ-482 at 3.

⁸³ D.98-12-075 at 59.

⁸⁴ SVCE Opening Brief at 17.

⁸⁵ *Ibid.*

⁸⁶ SVCE Comments on Draft Resolution ALJ-482 at 3.

through its procurement strategy,⁸⁷ although CPED did not classify those benefits as “unlawful benefits.” Nor do we believe that benefits derived from failing to comply with regulatory directives need be unlawful to tip the scale in favor of upholding the penalty.

With respect to the time and manner violation, SVCE contends that failing to submit a complete refiling was a minor error equivalent to a typo. SVCE, however, miscommunicated the amount of RA procured, which in fact, under the RA Guidelines is a major error requiring a complete refiling. Failure to accurately report RA capacity gives the CAISO inaccurate capacity data, which is contrary to the public interest.

Based on the totality of the circumstances, including the previous four factors, we find no mitigating factors and at least one aggravating factor for the deficiency violation and one aggravating factor for the time and manner violation. Despite the aggravating factors, the Commission finds that the established RA penalty schedule should apply to SVCE’s citation. While we do not consider SVCE’s past two violations in the RA program to be aggravating factors at this time, SVCE 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

The Commission finds that CPED has met its burden to prove that the violations at issue in the citation occurred and the penalties were correctly calculated. These findings shifted the burden of proof to SVCE.

Based on the five factors in D. 98-12-075, and the evidence in this proceeding, deliberate actions resulted in violations and SVCE failed to meet its burden of persuasion that the citation penalty should be reduced or excused. The citation appeal is hereby denied.

SVCE’S MOTION FOR OFFICIAL NOTICE OF ADVICE LETTER 7578-E

The record in this proceeding was closed after the parties filed and served their reply briefs on October 11, 2024. Moreover, given that Pacific Gas and Electric Company’s Advice Letter 7575-E (Advice Letter) is hearsay, even if we were to re-open the record and take judicial notice of the Advice Letter, we would do so solely as to the existence

⁸⁷ CPED-01-C at 10, 15, 23 and 24; CPED-03-C at 1-4.

of the document and not for the truth of the contents therein. Accordingly, SVCE's June 9, 2025 Motion to Take Official Notice of Pacific Gas and Electric Company's Advice Letter 7575-E (Advice Letter) is denied.

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. A draft of the draft resolution was distributed for comment to the service list. SVCE submitted comments on September 2, 2025.

SVCE's comments cite D.25-04-043 in K.21-11-018, which was a rehearing decision that reduced Shell Energy's penalties in Citation No. E-4195-0113. D.25-04-043 found that the correct standard had not been applied in that case. SVCE argues that consistent with D.25-04-043, "the Commission must assess [SVCE's] conduct and consider mitigating circumstances, regardless of whether [SVCE] established its defense" of impossibility.⁸⁸

SVCE clarified that it does not dispute that there was a violation of the year ahead RA requirements, and a time and manner violation for failure to submit a complete refiling when it submitted its supporting documentation that showed additional RA. Instead, SVCE argues the Commission should recognize SVCE's good faith efforts to acquire additional RA and should reduce the penalty. SVCE describes its procurement activities as "above and beyond reasonable efforts."⁸⁹ SVCE further commented that it did not obtain any unlawful benefits through its conduct, nor were its violations deliberate.⁹⁰

Response to Comments

Two holdings in D.25-04-043 warrant modification of this resolution. First, the standard for evaluating penalty waivers should not be tied to the appellant's affirmative defense of impossibility. Second, the burden of proof is not on any party in applying the five factor test. In light of these two holdings and having reviewed and considered all comments, the following changes were made to the draft resolution:

⁸⁸ SVCE's Comments on Draft Resolution ALJ-482 at 2.

⁸⁹ *Id.*

⁹⁰ *Id. at 6.*

- In response to the discussion in D.25-04-043 regarding affirmative defenses, footnote 36 was added to the discussion on the standard for establishing the affirmative defense in the Conclusion to Section 2 on page 9; and changes were made to Section a. of the draft resolution under the heading Severity of the Offense, on page 12.
- In response to SVCE's comment that the burden of proof under the five-factor test does not fall on appellant, changes were made to Section 4, on page 11 and to the Conclusion on page 20 of the draft resolution.
- In response to SVCE's comment that regardless of whether a party to an enforcement action establishes an affirmative defense, the Commission may consider whether the evidence in the record warrants mitigating the penalty based on the five-factor test, changes were made to the draft resolution in the following places:
 - Section a., under the heading Severity of the Offense, on page 12;
 - Section a., under the heading The Entity's Conduct on pages 14 and 15; and
 - Section a., under the heading Totality of the Circumstances, on page 19.
- In response to SVCE's comment that it undertook good faith efforts to procure resources, and that its procurement violation was inadvertent, and the entity's conduct factor of the five-part test weights in favor of reduction or elimination of the fine, changes were made to Section a. of the draft resolution under The Entity's Conduct on pages 14 and 15.
- In response to SVCE's comment that there were mitigating factors that should reduce or eliminate its penalty consistent with D.25-04-043, changes were made to Section a. of the draft resolution under the heading The Role of Precedent on pages 18 and 19.
- In response to SVCE's comment that applying the five-part test from D.98-12-075, on balance, the factors weigh in favor of SVCE, and the fine should be reduced or eliminated, changes were made to Section a. of the draft resolution, under the heading Totality of the Circumstances, on page 19.
- Additionally minor and non-substantive changes have been made to the draft resolution that improve the clarity of the draft resolution.

FINDINGS OF FACT

1. On October 31, 2022, SVCE filed its year-ahead system local and flexible RA compliance filing.
2. On December 29, 2022, SVCE filed a revised compliance filing.
3. On February 13 and 14, 2023, the Commission's Energy Division sent deficiency notices to SVCE setting a February 21, 2023 deadline to cure deficiencies and to provide supporting documentation for any additional RA procured.
4. SVCE's February 21, 2023 filing included procurement of additional RA for June 2023, which did not fully satisfy its RA procurement obligation. The filing also did not include all supporting documentation.
5. On April 18, 2023, CPED requested an update on SVCE's 2023 RA procurement efforts and all supporting documentation. SVCE did not respond to this request.
6. CPED sent requests for updates on SVCE's 2023 RA procurement efforts on June 21 and 22, 2023. SVCE reported that it had not cured the deficiencies.
7. On July 18, 2023, the Commission requested supporting documentation from SVCE regarding RA that SVCE reported as pending in its February 21, 2023 filing. SVCE immediately responded by providing two contracts.
8. The contracts that SVCE sent to the Commission on July 18, 2023, included greater RA capacity than was reported in SVCE's February 21, 2023 compliance filing.
9. The assessed penalty credited SVCE with the full volume of RA procured, even though it was not fully reported in SVCE's February 21, 2023 compliance filing.
10. On October 27, 2023, CPED issued Citation E-4195-0134 to SVCE in the amount of \$3,012,248.
11. On November 27, 2023, SVCE filed a timely Notice of Appeal.

12. Citation E-4195-0134 correctly identifies SVCE's June, July, August and September 2023 RA deficiencies.
13. Citation E-4195-0134 correctly identifies the violation for failing to file its RA compliance filing at the time and in the manner required
14. Citation E-4195-0134 correctly calculates the penalties under the penalty schedule adopted in Resolution 4195, as amended.
15. The evidentiary record was closed upon the submission of reply briefs on October 11, 2025.

CONCLUSIONS OF LAW

1. CPED met its burden of proof in establishing that a violation occurred, and the citation penalty was correctly calculated.
2. SVCE has not met its burden of rebutting that the violation occurred and failed to meet its burden of proof that the citation penalty should be reduced or excused.
3. SVCE has not met its burden of proof in establishing the affirmative defense that it was impossible to procure summer 2023 year-ahead system RA to satisfy regulatory requirements.
4. The citation amount and penalty for both the June 2023 year ahead system RA deficiencies and the time and manner violation were appropriately issued.
5. Pacific Gas and Electric Company's Advice Letter 7575-E (Advice Letter) is hearsay and should not be admitted into the evidentiary record for the truth of its contents.
6. The citation should be affirmed.

THEREFORE, IT IS ORDERED that:

1. Citation E-4195-0134 is affirmed.

2. Silicon Valley Clean Energy Authority shall pay a fine of \$3,012,248 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. Silicon Valley Clean Energy Authority shall write on the face of the check or money order, "For deposit to the General Fund pursuant to Resolution ALJ-482."
3. Silicon Valley Clean Energy Authority's Motion to Take Official Notice of Pacific Gas and Electric Company's Advice Letter 7578-E is denied.
4. K.23-11-015 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 _____, the following Commissioners voting favorably thereon:

Rachel Peterson
Executive Director