

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-488
Administrative Law Judge Division
[Date]

R E S O L U T I O N

Resolution ALJ-488 Resolves K.19-03-024, City of San José, Administrator of San José Clean Energy to Citation E-4195 issued on February 27, 2019 by Consumer Protection and Enforcement Division.

SUMMARY

In this Resolution, the California Public Utilities Commission (Commission) dismisses the appeal of the City of San José, administrator of San José Clean Energy (SJCE), from Citation E-4195-0052, which assessed a penalty of \$6,791,155.40 for failure to meet Year-Ahead system and flexible Resource Adequacy (RA) requirements for July, September, and October 2019.

Decision (D.) 21-12-066 granted rehearing on a narrow issue: whether SJCE could prove its assertion that, even if it had accepted offers that were later withdrawn while under review, it still would have had a deficiency that could not have been cured because no other system or flexible RA was available. After reviewing the evidentiary record, it is concluded that SJCE failed to make this showing. The record demonstrates that RA offers were available in the market but were declined or lost due to SJCE's business decisions and internal governance processes.

Accordingly, Citation E-4195-0052 is upheld and the penalty is affirmed in full.

BACKGROUND

On February 27, 2019, the Commission's Consumer Protection and Enforcement Division (CPED) issued Citation E-4195-0052 (Citation) to SJCE for failing to procure sufficient RA to meet its 2019 system RA requirements for the months of July and September and 2019 flexible RA requirements for July, September, and October. The

Citation assessed a penalty of \$6,791,155.40. On March 29, 2019, SJCE filed a Notice of Appeal to the Citation.

On April 17, 2019, a Notice of Citation Appeal Hearing was issued setting an evidentiary hearing for April 29, 2019. On April 23, 2019, SJCE requested that the assigned Administrative Law Judge (ALJ) convert the hearing scheduled for April 29, 2019, to a prehearing conference (PHC) and continue the evidentiary hearing for good cause. On April 26, 2019, the assigned ALJ issued a ruling converting the evidentiary hearing scheduled for April 29, 2019, into a PHC.

On October 14, 2019, the assigned ALJ issued a Scoping Memo, which determined that certain items needed to be addressed before moving forward to be able to examine the Citation and assess the penalty.

On March 4, 2020, the Chief ALJ issued a Notice of Reassignment, and the Appeal from Citation K.19-03-024 was reassigned to a new ALJ. On April 17, 2020, the new ALJ issued a Ruling that, among other things, determined that evidentiary hearings were not necessary because, assuming SJCE's asserted facts as true, SJCE had not (1) demonstrated impossibility of compliance with its system or flexible RA requirements or (2) established other mitigating factors that would merit excusing or reducing the Citation penalty.

On May 4, 2020, SJCE filed a Motion for Reconsideration of the Ruling. On June 9, 2020, the ALJ issued a Ruling denying SJCE's Motion for Reconsideration. On September 18, 2020, the Commission issued Resolution ALJ-382 denying SJCE's appeal.

On October 12, 2020, SJCE timely filed an application for rehearing of ALJ-382. On December 16, 2021, D.21-12-066 was issued, which vacated Resolution ALJ-382 and granted a rehearing. On December 6, 2024, this matter was reassigned to ALJ Gerald F. Kelly.

On January 15, 2025, a ruling setting evidentiary hearings to begin on April 22, 2025, was issued. On April 17, 2025, CPED filed a Motion to Strike some of SJCE's Exhibits. On April 19, 2025, the assigned ALJ issued a ruling to advise the parties that prior to the start of evidentiary hearings on April 22, 2025, there would be a Law and Motion Hearing to discuss CPED's Motion to Strike.

CPED's Motion to Strike was denied on April 22, 2025. After the Motion to Strike was denied, SJCE and CPED requested to forgo evidentiary hearings. SJCE acknowledged

that they were waiving their right to a hearing and acknowledged that the matter would be resolved based on the written evidentiary record before the assigned ALJ. On April 23, 2025, the assigned ALJ issued a ruling setting the briefing schedule for the matter. Opening briefs were filed on May 30, 2025, and reply briefs were filed on June 20, 2025.

DISCUSSION

Decision 21-12-066 granted rehearing on a narrow basis: “to give SJCE the opportunity to prove its assertion, that had it accepted the offers that were subsequently withdrawn while SJCE was vetting their terms, it still would have had a deficiency that could not have been filled because there was no other system or flexible RA available.”

The burden was therefore on SJCE to demonstrate, by a preponderance of the evidence, that (1) acceptance of the withdrawn offers would not have cured its compliance deficiency, and (2) no other system or flexible RA existed in the market to fill the gap.

SJCE failed to meet the narrow rehearing requirement.

SJCE does not dispute that resources were available in the market. Instead, SJCE argues that offers came with unfavorable terms, such as annual strip products or higher prices, and therefore SJCE chose not to accept them (See, SJCE-1 at 10, ¶43 and CPED-1 at 5). SJCE itself acknowledged rejecting bids as “too expensive” and refused strip products that would have secured its RA needs because the bids exceeded SJCE’s internal guidelines. This demonstrates that capacity existed but was declined by SJCE.

SJCE’s internal guidelines and governance delays caused offers to expire. SJCE’s own Risk Oversight Committee (ROC) processes required staff to subject contracts to board-level approval before execution. (See SJCE-25 and SJCE-45.) As a result, sellers withdrew offers while awaiting ROC review. (See SJCE-49.) These self-imposed restrictions delayed execution and directly caused SJCE to lose capacity that was available in the market. As noted by CPED, SJCE did not demonstrate “that it was not possible, at any point in time and under any terms for SJCE to procure capacity that would have met its RA obligation during its deficiency period.” (See, CPED Opening Brief at 1, citing CPED-2 at 2.

Because capacity was withdrawn while under internal review, the evidence demonstrates that resources existed and could have been secured had SJCE acted promptly. This undermines SJCE's claim that no RA was available.

SJCE's procurement strategy created, rather than proved, deficiency. SJCE chose to rely on Pacific Gas and Electric Company (PG&E) for the supermajority of its 2019 RA needs, even after PG&E revised its offer to exclude July, September, and October. (See SJCE-1 at 7, ¶28; see also SJCE-25.) This business decision left SJCE with a large gap and no contingency plan. When faced with filling that gap, SJCE declined offers from other sellers because of price or format.

The evidentiary record does not demonstrate impossibility. Instead, it shows a deliberate procurement strategy that failed in execution. SJCE did not introduce evidence demonstrating that no other RA was available. SJCE rejected bids, delayed responses, and limited its pool of counterparties. Nothing in the evidentiary record establishes that no other RA was available to cure this deficiency.

SJCE has failed to carry its burden on rehearing. The Commission granted rehearing to allow SJCE the opportunity to prove that, even with acceptance of withdrawn offers, it could not have achieved compliance because no other RA was available. SJCE did not meet this standard. The record shows that resources were available but were declined by SJCE or lost due to internal delays. (See, CPED Opening Brief at 6-11). Scarcity, price, or unfavorable terms do not establish impossibility.

SJCE failed to meet the rehearing requirement because the record shows that (1) RA resources were available in the market, (2) SJCE declined or delayed action on those resources, and (3) SJCE's defense rests on unfavorable pricing and self-imposed guidelines rather than objective unavailability. SJCE did not prove that no system or flexible RA was available. Rather they refused available bids, relied too heavily on PG&E, and delayed through internal governance.

It is noted that SJCE introduced minimal new evidence that was not previously introduced into the record. The new direct testimony of witness Jeanne M. Sole (SJCE Exhibit 1) focused on SJCE's structure and rather than address the narrow issue that rehearing was granted on chose to present the same arguments. Rather than focus on the issue that the Commission granted rehearing on, the witness chose to argue that the

amount of time that has passed since the penalty was assessed had prejudiced SJCE's ability to litigate its appeal.

Furthermore, SJCE voluntarily waived its right to an evidentiary hearing and conducted no cross examination of any of CPED's witnesses. SJCE requested at the conclusion of the law and motion hearing conducted on April 22, 2025, that the scheduled evidentiary hearings be canceled and a decision be made based on the evidentiary record supplemented with briefs from the parties.

Based upon the written evidentiary record it is concluded that SJCE has failed to address the narrow issue that D.21-12-066 granted rehearing on. SJCE has failed to meet its burden and failed to prove its assertion that even if it had accepted offers that were later withdrawn while under review, it still would have had a deficiency that could not have been cured because no other system or flexible RA was available. As set forth above, the record clearly establishes that RA offers were available in the market and were declined or lost due to SJCE's business decisions and internal governance delays.

The burden was therefore on SJCE to demonstrate, by a preponderance of the evidence, that (1) acceptance of the withdrawn offers would not have cured its compliance deficiency, and (2) no other system or flexible RA existed in the market to fill the gap.

SJCE failed to meet the narrow rehearing requirement. Accordingly, the Citation should be upheld.

COMMENTS ON DRAFT RESOLUTION

Comments are allowed on this Resolution pursuant to Public Utilities Code section 311(g) and Rule 14.5 of the Commission's Rules of Practice and Procedure. A draft of today's resolution was distributed for comment by the interested parties.

SJCE filed comments on February 12, 2026. SJCE requested various changes such as a statement to acknowledge that SJCE made significant efforts to procure 2019 RA, that 2019 RA compliance year was unique, and unprecedented factors hindered LSE compliance and an acknowledgement that SJCE received no economic benefit from noncompliance.

Rehearing was granted to provide SJCE with the opportunity to establish the following: (1) acceptance of the withdrawn offers would not have cured its compliance deficiency, and (2) no other system or flexible RA existed in the market to fill the gap. The requested

factual changes noted in SJCE's comments do not change the fact that SJCE made a business decision to rely primarily on PG&E for the super majority of its 2019 RA needs and did so without securing alternative arrangements of contingency procurement.

The evidence presented in this proceeding clearly shows that (1) RA resources were available in the market, (2) SJCE declined or delayed action on those resources, and (3) SJCE's defense rests on unfavorable pricing and self-imposed guidelines rather than objective unavailability. SJCE did not prove that no system or flexible RA was available. Rather they refused available bids, relied too heavily on PG&E, and delayed through internal governance.

SJCE also asserts that the penalty factors such as an entity's financial resources set forth in Decision (D.) 98-12-075 were not adequately considered. Among other things, SJCE argues in this proceeding that its public entity status should be considered as a factor for a penalty reduction. SJCE's public entity status is not relevant. The penalty amount is commensurate with SJCE's large RA deficiency and the simple fact that SJCE is a public entity cannot be a basis for a reduction of the penalty. Another issue that must be considered is how lowering a penalty amount would achieve the objective of deterrence. Lowering a penalty amount could have a direct impact on future compliance. Additionally, it is noted that SJCE was cited a subsequent time in 2020 for failing to meet its 2020 year-ahead RA. Accordingly, even if all five principles set forth in D.98-12-075 were evaluated separately, the penalty would not have been subsequently reduced.

On February 13, 2026, PG&E requested permission to file reply comments to SJCE's comments. PG&E's request was granted and PG&E filed reply comments on February 18, 2026.

PG&E notes in its reply comments that Draft Resolution ALJ-488 "appropriately confirms the fact that SJCE made a business decision to rely primarily on PG&E for the super majority of its 2019 Resource Adequacy needs and did so without securing alternative arrangements or contingency procurement."

PG&E also took issue with SJCE's allegations that PG&E withheld capacity on its part and asserts that PG&E did not withhold any capacity in 2018 or at any other time.

ASSIGNMENT OF PROCEEDING

Gerald F. Kelly is the assigned Administrative Law Judge for this proceeding.

FINDINGS AND CONCLUSIONS

1. D.21-12-066 granted rehearing solely to provide SJCE the opportunity to present evidence that, even if it had accepted withdrawn offers, SJCE still would have remained deficient because no other system or flexible Resource Adequacy (RA) was available.
2. SJCE does not dispute that it failed to meet its Year-Ahead system and flexible RA obligations for July, September, and October 2019.
3. The evidentiary record shows that system and flexible RA offers were available in the market, but SJCE declined certain bids because it judged them to be too expensive or because the offers were in the form of annual strips.
4. SJCE's internal Risk Oversight Committee policies required approval before contract execution, which caused delays and resulted in the withdrawal of offers while under SJCE review.
5. SJCE elected to rely primarily on PG&E to meet the supermajority of its 2019 RA needs, even after PG&E revised its offer to exclude July, September, and October.
6. SJCE rejected or failed to act on additional offers from other sellers that could have reduced or eliminated its deficiency.
7. Nothing in the evidentiary record demonstrates that no system or flexible RA was available to SJCE under any terms.
8. SJCE's evidence demonstrates that capacity was available but rejected or lost due to its own business decisions and internal processes.
9. Market scarcity, high prices, or unfavorable conditions do not establish impossibility of compliance with RA obligations.
10. SJCE failed to meet its burden to establish that its deficiency could not have been cured because no system or flexible RA was available.
11. Citation E-4195-0052 was correctly issued and should be upheld in full.
12. This proceeding should be closed.

THEREFORE, IT IS ORDERED that:

1. The appeal of the City of San José, administrator of San José Clean Energy (SJCE), from Citation E-4195-0052 is denied because SJCE failed to meet the rehearing requirement set forth in Decision 21-12-066.

2. Citation E-4195-0052, including the assessed penalty of \$6,791,155.40, is affirmed in full.
3. The proceeding is closed.

This resolution is effective today.

