Date of Issuance
September 21, 2026

Decision 26-09-074 September 17, 2026

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Appeal of City of San José, Administrator of San José Clean Energy from Citation No. E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division.	K.19-03-024

ORDER MODIFYING RESOLUTION ALJ-488 AND DENYING REHEARING, AS MODIFIED

I. SUMMARY

This Order addresses the application for rehearing of Resolution ALJ-488, *Resolves K.19-03-024, City of San José, Administrator of San José Clean Energy to Citation E-4195* (2026) (Resolution)[1] filed by City of San José, Administrator of San José Clean Energy (San Jose or SJCE). In the Resolution, we denied San Jose's appeal of Citation E-4195-0052 (Citation) issued by the Commission's Consumer Protection and Enforcement Division (CPED). CPED cited and fined San Jose $6,791,154.40 for failing to procure sufficient resource adequacy (RA) to meet its 2019 system RA requirements for July and September, and its flexible RA requirements for July, September, and October.

San Jose timely filed an application for rehearing alleging we erred by: (1) failing to proceed in a manner required by law in not applying the Decision (D.) 98-12-075[2] five-factor test to consider mitigation of the penalty; (2) incorrectly

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[1] Unless otherwise noted, citations to Commission Resolutions issued since July 1, 2000 are to the official pdf versions, which are available on the Commission's website at: https://docs.cpuc.ca.gov/ResolutionSearchForm.aspx.

[2] *Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates Adopted by the Commission*

assigning to San Jose the burden of proof as to the five-factor test; (3) abusing our discretion by failing to consider the five factors in assessing San Jose's penalty on appeal; (4) failing to comply with Public Utilities Code Section 1705 by not making the requisite findings as to the five-factor test; and, (5) failing to properly consider the evidence San Jose submitted into the record during their rehearing proceeding.

We have carefully considered all of the allegations presented by the rehearing applicant and conclude that certain modifications of the Resolution are warranted to clarify our reasoning as to the five-factor test. Following these modifications, we deny rehearing of the Resolution, as modified.

II. BACKGROUND

On February 27, 2019, CPED issued Citation E-4195-0052, assessing a penalty of $6,791,155.40. San Jose filed a Notice of Appeal on March 29, 2019.

A Notice of Citation Appeal Hearing was issued for April 29, 2019, but at San Jose’s request, the assigned Administrative Law Judge (ALJ) converted the scheduled evidentiary hearing into a prehearing conference (PHC). Following the PHC, the assigned ALJ issued rulings identifying issues to be addressed, and on October 14, 2019, a Scoping Memo directed the parties to brief several threshold legal and factual matters before any evidentiary hearings could proceed.

In March 2020, San Jose’s appeal was reassigned to a new ALJ. On April 17, 2020, the new ALJ issued a ruling finding that evidentiary hearings were unnecessary because, even assuming San Jose’s asserted facts were true, San Jose had neither shown impossibility of compliance with its RA obligations nor established mitigating circumstances that would warrant reducing the penalty. San Jose’s subsequent Motion for Reconsideration was denied, and on September 18, 2020, the Commission issued Resolution ALJ-382, *Resolves the Appeal K.19-03-024 of Citation No. E-4195 by San Jose Clean Energy* (2020) denying San Jose’s appeal.

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in Decision 97-12-088 (1998) [D.98-12-075]. This decision is available at: https://files.cpuc.ca.gov/gopher-data/decisions/D9812075.pdf

San Jose timely applied for rehearing of Resolution ALJ-382. On December 16, 2021, the Commission issued D.21-12-066, vacating Resolution ALJ-382 and granting rehearing "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." (*Order Granting Rehearing of Resolution ALJ-382 and Vacating Resolution* (Dec. 17, 2021) [D.21-12-066], p. 6.)[3] D.21-12-066 also stated that "[i]n addition, SJCE shall have an opportunity to present evidence to address the penalty factors such as the entity's financial resources." (*Ibid*.)

The matter was reassigned on December 6, 2024. A ruling issued on January 15, 2025, set evidentiary hearings to begin on April 22, 2025. Shortly before the scheduled hearings, CPED filed a Motion to Strike certain San Jose's exhibits; that motion was denied on April 22, 2025. After the ruling, San Jose and CPED jointly requested to forgo evidentiary hearings and instead resolve the matter based solely on the written evidentiary record. The assigned ALJ granted this request and set a briefing schedule. Parties submitted opening briefs on May 30, 2025, and reply briefs on June 20, 2025.

Once briefing was completed, the Commission issued Resolution ALJ-488, dismissing San Jose's appeal, upholding Citation E-4196-0052, and affirming the $6,791,155.40 penalty in full. The Resolution explained that D.21-12-066 "granted rehearing on a narrow issue: whether San Jose 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." (Resolution ALJ-488, p. 1.) The Resolution concluded that, having been given the opportunity to do so, "SJCE failed to make this showing." (*Ibid*.)

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[3] Unless otherwise noted, citations to Commission Decisions issued since July 1, 2000 are to the official pdf versions, which are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx.

III. DISCUSSION

A. We clarify the scope of rehearing under D.21-12-066.

San Jose alleges that we failed to proceed in the manner required by law because the Resolution erroneously narrowed the scope of the rehearing proceeding to focus only on the impossibility defense. (Rehg. App., pp. 2-4, 7-8.) Specifically, that we erred in not applying the five penalty factors set forth in D.98-12-075, despite D.21-12-066 granting rehearing so that San Jose could present evidence bearing on these factors. (*Ibid*.; see D.21-12-066, p. 6 ["In addition, SJCE shall have an opportunity to present evidence to address the penalty factors such as the entity's financial resources."]; see also Reporter's Transcript (RT), Vol. 1, April 22, 2025, at 5:4; D.98-12-075.)

The Resolution stated that rehearing was granted "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." (Resolution ALJ-488, Finding and Conclusion 1; see also *id.* at p. 4 ["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."])

San Jose is correct that D.21-12-066 permitted it to present evidence addressing the penalty factors. Notably, San Jose does not contend that it was denied the opportunity to do so. Nonetheless, Finding and Conclusion 1 is modified to remove reference to "solely."

B. We confirm that D.98-12-075 does not place a burden of proof on any party.

San Jose further argues that the Resolution improperly placed the burden of demonstrating that mitigation of the penalty is warranted under the five-factor test on San Jose. (Rehg. App., pp. 8-10.) According to San Jose, this conflicts with recent Commission precedent clarifying that D.98-12-075 places no burden on any party and that mitigation is a separate inquiry surviving a failed affirmative defense. (*Ibid*.) San Jose is incorrect.

The Resolution explicitly placed the burden on San Jose to establish the impossibility defense. The Resolution stated that "the burden was therefore on SJCE to demonstrate, by a preponderance of the evidence," that (1) acceptance of withdrawn offers would not have cured the deficiency, and (2) no other RA existed. (Resolution ALJ-488, p. 3.) The Resolution concluded that San Jose failed to meet this burden because RA resources were available and were declined or lost due to San Jose's procurement choices and internal processes. (*Id.* at pp. 3-5.) The Resolution also indicated that the burden allocation was consistent with the narrow scope of rehearing set by D.21-12-066. (*Id.* at p. 3.)

The Resolution properly required San Jose to carry the burden on the impossibility question. (See *Oosten v. Hay Haulers Dairy Employees & Helpers Union* (1955) 45 Cal.2d 784 ["Impossibility of performance is a defense and the burden of proof in establishing it rests on defendant."]; see also Resolution E-4195, *Approval of a modification to the current citation program enforcing compliance with system and local Resource Adequacy filing requirements by Load-Serving Entities* (2008) Appendix A, Sec. 2.7.7; Resolution ALJ-377, *Modifies and Makes Permanent the Citation Appellate Rules and General Order 156 Appellate Rules* (2020) Appendix B, p. 27.) San Jose does not dispute this accurate burden allocation. (See Rehg. App., p. 9.)

D.21-12-066 granted San Jose an opportunity to present evidence on impossibility and the penalty factors, and it did not impose a party burden for any mitigation analysis the Commission may consider under D.98-12-075. (D.21-12-066, pp. 5-6; Rehg. App., p. 9.) The Resolution also did not discuss what the burden is as to the five-factor penalty analysis or make any statements regarding San Jose bearing any burden of proof as to those factors.

Thus, San Jose's argument that the Resolution applied the incorrect evidentiary burden is inaccurate and erroneous.

C. We modify the Resolution to clarify why consideration of the five-factor test was not warranted in this case.

San Jose's main allegation of legal error is that, despite D.21-12-066 stating that San Jose is allowed to present evidence on penalty mitigation, we abused our discretion by not evaluating D.98-12-075's five penalty factors in the Resolution and by failing to engage with the evidence San Jose supplied on each factor. (Rehg. App., pp. 12-13.) San Jose contends that this omission contravenes mandatory Commission precedent and undermines the fairness of the penalty determination. (*Ibid*.)

The Resolution briefly addressed "SJCE's public entity status," "SJCE's large RA deficiency," and San Jose's subsequent 2020 citation in response to San Jose's comments on the Draft Resolution, ultimately concluding that "even if all five principles set forth in D.98-12-075 were evaluated separately, the penalty would not have been subsequently reduced." (Resolution ALJ-488, p. 5.) The Resolution also concluded that market scarcity or high prices do not amount to impossibility or a basis for lowering penalties. (*Id*. at pp. 6-7.) The Resolution did not evaluate each of the five factors against the evidence presented in the record.

D.21-12-066 primarily granted rehearing to allow San Jose "the opportunity to prove its assertion, that had it accepted the offers that were subsequently withdrawn while SJCE was vetting its terms, it still would have had a deficiency that could not have been filled because there was no other system or flexible RA available." (D.21-12-066, p. 6.) This is because San Jose's assertion of error in its prior rehearing application was that "it was led to believe it would have an opportunity to present evidence relevant to its defense in evidentiary hearings but was then unexpectedly denied this opportunity," resulting in a record "limited to only those facts laid out in its Notice of Appeal and briefings" and prejudice from "not being permitted to present facts favorable to its defense in evidentiary hearings." (D.21-12-066, p. 5.) This error was corrected here: San Jose submitted prepared testimony (RT, Vol. 1 at 9:13-14, 11:5:7, 13:3-6, 14:6-10, 15:7-13; 27:15-20; 36:12-19); the parties stipulated to the exhibit list and admission of the exhibits (*Id*. at 48:19-51:3); and, the parties stipulated to proceed without evidentiary hearings on the merits (*Id*. at 44:5-14; see also Rehg. App., p. 5 ["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."]).

As to the five-factor penalty test, D.21-12-066 granted San Jose "an opportunity to present evidence to address the penalty factors such as the entity's financial resources." (D.21-12-066, p. 6.) San Jose does not dispute that it was afforded the opportunity to do so on rehearing and parties fully briefed whether we should exercise our discretion to reduce San Jose's citation. (See May 30, 2025 *Opening Brief of the City of San José, Administrator of San José Clean Energy* (San Jose OB); May 30, 2025 *Opening Brief of the Consumer Protection and Enforcement Division* (CPED OB); June 20, 2025 *Reply Brief of the City of San José, Administrator of San José Clean Energy* (San Jose RB); and June 20, 2025 *Reply Brief of the Consumer Protection and Enforcement Division* (CPED RB).) San Jose's position, instead, is that we "must apply the five-factor test to RA citation appeals." (Rehg. App., p. 12.)

This broad assertion—that we are required to apply the five factors—is incorrect. Resolution E-4195 set out the schedule of penalties for violations of RA requirements. San Jose's fine was determined pursuant to that schedule. (Citation No. E-4195-0052.) San Jose does not assert that CPED incorrectly calculated the fine. (See generally San Jose OB and San Jose RB.)

Resolution E-4195 also states that "[i]n the event of an appeal, any remedy available may be imposed, and the remedy shall not be mandated by or limited to the Scheduled Penalty." (Resolution E-4195, Appendix A, p. 10.) Taken together with D.98-12-075's five "principles [that] distill the essence of numerous Commission decisions concerning penalties in a wide range of cases," which can be used "as precedent in determining the level of penalty in the full range of Commission enforcement proceedings…" (D.98-12-075, p. 34), we have recognized our discretion to apply the five-factor penalty test set forth in D.98-12-075 to RA citation appeals. (*Order Granting Rehearing and Modifying Resolution ALJ-463* (April 25, 2025) [D.25-04-043], p. 5, fn. 5; see also Resolution ALJ-424, *Resolves the Appeal K.21-08-001 of Citation*

E-4195-100 by Commercial Energy (2022) pp. 9-10; Resolution ALJ-394, *Resolves K.20-05-006, the Appeal of Clean Power Alliance of Southern California from Citation No. E-4195-82* (2021).)

However, while D.25-04-043 acknowledged our ability to exercise discretion to apply the five-factor test—and D.21-12-066 permitted San Jose to present evidence on the five factors on rehearing—there is no Commission precedent mandating the application of the five factors in RA appeal proceedings. Despite asserting that the Resolution's failure "to evaluate the five penalty factors constitutes a failure to proceed in a manner required by law," San Jose does not specify what law or precedent is violated. (Rehg. App., p. 12.) D.25-04-043, on which San Jose relies extensively, does not require us to apply the five-factor test in every RA citation appeal but rather acknowledges the importance of the "unique facts in the record" of each matter. (D.25-04-043, p. 5.)

While the Resolution did not fail to proceed in a manner required by law, we modify the Resolution to clarify why we chose not to exercise our discretion to apply the five factors in this case. Specifically, we did not deem application of the five-factor test and consideration of penalty mitigation warranted here because San Jose failed "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," which was the primary issue on rehearing.

D. The Resolution, as modified, does not need to state separate findings of fact as to the five-factor test.

San Jose further alleges that the Resolution failed to separately state findings of fact and conclusions of law on all material issues as required by Public Utilities Code section 1705. (Rehg. App., pp. 13–14.) Specifically, San Jose argues that the Resolution omits findings regarding each of the five penalty factors, despite San Jose's evidence addressing them. (*Ibid*.) San Jose asserts that the absence of such findings prevents meaningful review and violates statutory mandates for Commission decisions. (*Ibid*.)

The Resolution provided findings related to San Jose's procurement strategy, RA market availability, and San Jose's internal risk review delays. (Resolution ALJ-488, pp. 6–7.) The Resolution did not include individualized findings for each of the five D.98-12-075 penalty factors. (See *ibid.*) Instead, the Resolution stated that the penalty would not change even if we evaluated all five principles separately. (*Id.* at p. 6.)

Section 1705 requires our decisions to contain "separately stated, findings of fact and conclusions of law by the commission on all issues material to the… decision." "Every issue that must be resolved to reach [the] ultimate finding is 'material to the order or decision.'" (*Cal. Motor Transp. Co. v. Public Utilities Com.* (1963) 59 Cal.2d 270, 273.) Courts have held "[i]t is within the [Commission's] discretion to determine what factors are material to its decision based on the issues before it." (*Clean Energy Fuels Corp. v. Public Utilities Com.* (2014) 227 Cal.App.4th 641, 659.) The Commission's findings and conclusions are sufficient if they provide "a statement which will allow [the court] a meaningful opportunity to ascertain the principles and facts relied upon by the [Commission] in reaching its decision." (*Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 540.) In other words, "a complete summary of all proceedings and evidence leading to the decision" is not required. (*Ibid.*)

As discussed above, we are not required to consider the five-factor test in RA citation appeals and we were not required to consider penalty mitigation in light of San Jose's failure to establish its affirmative defense of impossibility. The five-factor test was not a material issue necessitating resolution and separate findings. As discussed above, we modify the Resolution to clarify that we did not deem application of the five-factor test and consideration of penalty mitigation warranted given San Jose's failure to prove its primary assertion on rehearing.

E. The Resolution did not mischaracterize or ignore the admitted evidence.

San Jose further asserts that the Resolution mischaracterized the evidentiary record by stating that San Jose introduced only minimal new evidence. (Rehg. App., pp. 10–12.) San Jose contends that it introduced 105 exhibits, along with sworn testimony addressing market conditions, efforts to procure RA, financial impacts, and penalty mitigation. (*Ibid.*) San Jose alleges that we ignored this evidence, failed to consider it under the five-factor test, and relied instead on an incomplete and inaccurate factual narrative. (*Ibid.*)

The Resolution indeed stated that "SJCE introduced minimal new evidence that was not previously introduced into the record." (Resolution ALJ-488, p. 4.) The Resolution also noted that San Jose's direct testimony focused on organizational structure rather than the narrow rehearing question. (*Ibid.*) The Resolution emphasized that San Jose voluntarily waived evidentiary hearings and declined opportunities to cross-examine CPED witnesses, resulting in a limited record appropriate to the narrow scope of rehearing. (*Ibid.*) Based on the written record, the Resolution concluded that San Jose's evidence did not establish impossibility or the absence of available RA. (*Id.* at pp. 4–5.)

We did not err. San Jose's allegation conflates volume with novelty. San Jose is correct as to the quantity and composition of its submitted evidence and testimony. (Rehg. App., pp. 10-12.) But the relevant exhibits, such as the July 2018 Request for Offers, the Pacific Gas & Electric Company and Peninsula Clean Energy correspondence, and the Risk Oversight Committee (ROC) governance materials, are dated 2018 and 2019 and reflect events that occurred, and were presumably known to San Jose, at the time of the original citation and its first appeal. (Ex. SJCE-24; Ex. SJCE-28; Ex. SJCE-34; Ex. SJCE-56; Ex. SJCE-55.) The 2025 testimony from Ms. Solé and Mr. Zimmer functioned largely to narrate and characterize that pre-existing documentary record rather than to supply new facts. (Ex. SJCE-108, ¶ 29; Ex. SJCE-24 [e-mails of Aug. 3, 6, and 9, 2018].) Formally entering 105 exhibits into the rehearing record is not the same as introducing new evidence, and San Jose does not distinguish between the two.

The Resolution's other findings are also consistent with the record reviewed above. Ms. Solé's testimony devotes its opening sections to San Jose's organizational structure, the Municipal Code's procurement provisions, and the formation and governance of the ROC before reaching the procurement narrative itself. (Ex. SJCE-

108, ¶¶ 18-22.) That structural emphasis supports the Resolution's observation that San Jose's direct testimony "focused on organizational structure rather than the narrow rehearing question." (Resolution ALJ-488, p. 4.) The narrow question on which rehearing was granted was whether San Jose would still have had a deficiency had it accepted the withdrawn offers while vetting their terms. (D.21-12-066, p. 7.) Most of San Jose's evidentiary submissions, including the ratepayer-vulnerability statistics and the reserve-covenant testimony addressed under the financial-resources factor above, bear on penalty mitigation generally rather than on that specific counterfactual, and San Jose's decision to waive evidentiary hearings and decline cross-examination of CPED's witnesses left that evidence, along with CPED's, untested. (See Resolution ALJ-488, p. 4.)

On this record, San Jose's allegation that we ignored or mischaracterized its evidence is not well supported. The Resolution's characterization distinguished between the quantity of material San Jose submitted and the quantity that bore new facts on the specific question rehearing was granted to resolve, and in that regard, we did not err.

IV. CONCLUSION

For the reasons stated above, good cause has not been demonstrated to grant rehearing. We will modify the Resolution as discussed above. Rehearing of the Resolution, as modified, is denied.

THEREFORE, IT IS ORDERED that:

1. The last paragraph on page 5 of Resolution ALJ-488 continuing on page 6, which begins: "SJCE also asserts that the penalty factors…," is modified as follows (with deletions in strikethrough and additions underlined):

> 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~~. Regardless, based on the present record and because San Jose failed "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," application of the five-factor test and consideration of penalty mitigation is not warranted in this case.

2. Finding and Conclusion 1 of Resolution ALJ-488 is modified as follows (with deletion in strikethrough):

> 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.

3. Rehearing of Resolution ALJ-488, as modified, is denied.

4. This proceeding, K.19-03-024, is closed.

This order is effective today.

Dated September 17, 2026, at San Marcos, California.

JOHN J.D. REYNOLDS
President
DARCIE L. HOUCK
KAREN DOUGLAS
MATTHEW BAKER
CHRISTINE HARADA
Commissioners