

EXHIBIT: SJCE #109
CPUC PROCEEDING: K.19-03-024
WITNESS: SJCE/JEANNE M.
SOLE/PREPARED TESTIMONY IN
SUPPORT OF SJCE'S APPEAL
DATE IDENT. _____ RECD. _____
ALJ: GERALD F. KELLY

PREPARED TESTIMONY OF JEANNE M. SOLE

in Support of the
Appeal of City of San José, administrator of San José Clean Energy,
to Citation E-4195-0052 issued on February 27, 2019 by
Consumer Protection and Enforcement Division

Before the Public Utilities Commission of the State of California

San José, California
March 25, 2025

I. Introduction and Witness Qualifications.

1. My name is Jeanne M. Solé. I am employed by San José Clean Energy (“SJCE”), a Community Choice Aggregator (“CCA”), administered by the City of San José, as Principal Power Resources Specialist. I have been in this position since July of 2024. Prior to that, I was Deputy Director of Power Resources for SJCE, since May of 2018. My office is located in the City of San José, California.
2. Prior to my employment by SJCE, I worked for the City and County of San Francisco, the California Independent System Operator (“CAISO”), Hagler Bailly Services Inc, Grueneich Resource Advocates, and the Conservation Law Foundation. I have over thirty years of experience in the electric industry advising and representing electric utilities, governments, electric customers, and environmental groups, nationally and internationally, at the Federal, State and local levels, assisting customers and utilities to contract for electric products and services, and tracking, reviewing, commenting on and interpreting Federal, state and local laws, regulations and guidelines pertaining to the electric industry.
3. In my current capacity as Principal Power Resources Specialist, I lead long-term power procurement and undertake special projects for SJCE.
4. In my former capacity as Deputy Director of Power Resources of SJCE, I supervised and directed SJCE’s procurement for all power resources, including those required to comply with California’s resource adequacy (“RA”) requirements.
5. I submit this prepared direct testimony based on my own knowledge, or on basis of information or belief, and as to those matters, I believe them to be true.

II. The Procedural Background and Amount of Time that has Elapsed Since the Penalty Was Assessed Have Prejudiced San José Clean Energy’s Ability to Litigate this Appeal.

6. On February 15, 2019, the California Public Utilities Commission (the “Commission” or “CPUC”) issued SJCE a “Citation for Violation of Resource Adequacy Reporting Requirements Under resolution E-4195, as Modified by Decisions 10-06-036, 11-06-022 and 14-06-050” assessing a total penalty for System and Flexible RA deficiency of \$6,811,155.10, and on February 27, 2019 the Commission issued another “Citation for Violation of Resource Adequacy Reporting Requirements Under resolution E-4195, as

Modified by Decisions 10-06-036, 11-06-022 and 14-06-050” (the “Citation”) revising the total penalty for System and Flexible RA deficiency to \$6,791,155.40 (the “Penalty”).¹

7. On March 29, 2019, the City of San José timely filed a Notice of Appeal,² and following a prehearing conference held on April 29, 2019, the Administrative Law Judge (“ALJ”) issued Administrative Law Judge’s Ruling Setting Proceeding Scope and Schedule on October 14, 2019 (the “Scoping Ruling”).
8. The Scoping Ruling did not invite the parties to identify or address the evidence they intended to present, and nothing in the Scoping Ruling suggested that the parties would thereafter be precluded from asserting or identifying facts to support their arguments. On November 5, 2019, the parties submitted briefs responding to the legal questions listed in the Scoping Ruling, and on November 12, they submitted reply briefs.³
9. On April 17, 2020, the ALJ issued Administrative Law Judge’s Ruling on Threshold Issues (K.19-03-024) which concluded that the multi-factor state and federal constitutional tests should be considered in the appeal of SJCE’s Penalty but decided that an evidentiary hearing was not needed because there were no contested material factual issues in this proceeding.
10. On May 4, 2020, SJCE filed a motion for reconsideration (“SJCE’s Motion”), asking the Commission to reassess its April Ruling and proceed with an evidentiary hearing based on statutory and due process rights, since nothing in the Scoping Ruling indicated that the first round of briefs were the only opportunity that SJCE would have to present evidence or, that otherwise, its rights to a full and meaningful consideration of any facts asserted or identified to support its arguments would be waived. SJCE’s Motion was denied in a ruling dated June 9, 2020 (“June Ruling”), in which the ALJ reasoned that “[t]he purpose for presenting evidence is to persuade the decisionmaker of the truth of asserted facts. Here, SJCE’s

¹ The difference is based on the Commission recalculating the penalty to reduce the System RA penalty by \$10,000 for assessing the System RA deficiency for both the July and September months, and miscalculating the penalties assessed on SJCE’s deficiency for Flexible RA in January and February, by \$5,000 for each of those months under a strict application of the penalty. (See Citation for Violation of Resource Adequacy Reporting Requirements Under Resolution E-4195, as Modified by Decisions 10-06-036, 11-06-022 and 14-06-050 (2-15-19) and Citation for Violation of Resource Adequacy Reporting Requirements Under resolution E-4195, as Modified by Decisions 10-06-036, 11-06-022 and 14-06-050 (2-27-19).)

² See Docket of K.19-03-024.

³ *Id.*

asserted facts are not in dispute. Rather, they are assumed to be true. Accordingly, there is no due process cause for or right to evidentiary hearing on these facts.”⁴

11. On June 16, 2020, the Commission issued Draft Resolution ALJ-382, which denied SJCE’s appeal. SJCE submitted comments on the draft resolution on July 14, 2020. The Comments pointed out that the Draft Resolution failed to proceed in the manner required by law, adopted findings that are not supported by substantial evidence, constituted an abuse of the Commission’s discretion, and violated SJCE’s constitutional rights. The Draft Resolution was amended to include findings about SJCE’s procurement efforts after the Year Ahead (“YA”) compliance deadline. The amended Draft Resolution also included written responses to SJCE’s comments. After being held twice, on September 10, the Commission voted to approve the Resolution.
12. SJCE paid the entire Citation Penalty amount of \$6,791,155.40, with the Commission indicating that payment was received on October 6, 2020.⁵
13. On October 12, 2020, SJCE filed its Application of The City of San José, Administrator of San José Clean Energy, For Rehearing of Resolution ALJ-382.
14. On December 17, 2021, Decision (“D”).21-12-066 - Order Granting Rehearing Of Resolution AL-382 and Vacating Resolution was issued.
15. On December 6, 2024, Chief ALJ Michell Cooke filed a Notice of Reassignment, reassigning the Appeal from Citation K.19-03-024 from ALJ Hallie Yacknin to ALJ Gerald F. Kelly.⁶
16. On January 15, 2025, ALJ Kelly issued Administrative Law Judge’s Ruling Setting Citation Appeal Hearing and Other Directives,⁷ which identified the issues from D.21-12-066 to be addressed at the Hearing, specifically:

Rehearing is granted 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. In addition, SJCE shall have an opportunity to present evidence to address the penalty factors such as the entity’s financial resources.

⁴ See June Ruling, at 2.

⁵ Acknowledgment of that payment can be found at: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/ueb/energy-citations/2025/jan-2025-ueb-energy-citations.pdf>.

⁶ See Docket (K.19-03-024).

⁷ Administrative Law Judge’s Ruling Setting Citation Appeal Hearing and Other Directives (January 15, 2025) (K.19-03-024), at 3.

That Ruling set hearing dates for April 22-24, 2025.

17. During the time that has elapsed from when SJCE was initially issued the Citation (February 15, 2019) for 2019 RA deficiencies it began procuring in 2018, until ALJ Kelly's Ruling Setting Citation Appeal Hearing, (January 15, 2025), SJCE has experienced staffing changes including personnel turnover and attrition.⁸ Additionally, potential witnesses have since become unavailable due to the passage of time, and memories have faded.

III. The Structure of SJCE.

18. As a single jurisdiction CCA, SJCE is operated by the City of San José, a California Charter City, with the San José City Council as our governing body and ratemaking authority. As a City program, SJCE must operate pursuant to the City's Municipal Code, part of which controls power procurement. The Municipal Code provided that "[b]ased on forecasted needs, the City may enter into contracts to procure Power Products for a term up to 25 years, under bilateral agreements, net energy metering, Feed-in-Tariffs or through a competitive bidding process." Under the Municipal Code, "speculative buying of power products on behalf of SJCE is prohibited."⁹ That prohibition extends to the "purchase or sale of Power Products not reasonably anticipated to be used for meeting forecasted retail loads, commercial commitments, risk management, regulatory requirements, or to achieve City Council goals at the time of the agreement."¹⁰
19. On August 29, 2017, San José City Council approved SJCE's implementation plan.¹¹ On January 30, 2018, San José City Council approved revisions to the launch schedules to September 1, 2018 for municipal accounts, and March 1, 2019 for the remainder of San José's residents and businesses.¹² On November 6, 2018 San José City Council revised the

⁸ See SJCE's Notice of Change of Handling Attorney (K.19-03-024), filed February 10, 2025.

⁹ See Section 2.5 of the City's Energy Risk Management Policy, attached as Exhibit A to Resolution No. 78574 (April 19, 2018), found at: <https://records.sanjoseca.gov/Resolutions/RES78574.pdf>; see also Section 26.50.020 of Ordinance 30028 (December 29, 2017), found at: <https://records.sanjoseca.gov/Ordinances/30028.pdf>.

¹⁰ See Section 26.10.120 of Ordinance 30028 (December 29, 2017), found at: <https://records.sanjoseca.gov/Ordinances/30028.pdf>.

¹¹ See Ordinance 29988 (August 29, 2017), found at: <https://records.sanjoseca.gov/Ordinances/29988.pdf>.

¹² See January 26, 2018 San Jose Community Energy Department Status Update Memorandum, from Lori Mitchell to the Mayor and City Council, found at: <https://sanjose.legistar.com/View.ashx?M=F&ID=5753096&GUID=479D1DBE-C041-4096-9A5E-3CD2575FE763>.

phase in plan to phase in all but San José’s small commercial and NEM customers in February 2019.¹³

20. On May 1, 2018, San José City Council adopted Resolution No.: 78574, providing for Energy Risk Management Policies (the “Policies”) to govern procurement of power products for SJCE.¹⁴ The Policies called for creation of an internal Risk Oversight Committee (“ROC”), comprised of executive-level city employees with specialized knowledge of power procurement, finance, and risk operations.¹⁵ The ROC was “responsible for overseeing compliance with risk management policies within SJCE,” and served “as the highest level of organizational risk management.”
21. The Policies also provided for ROC adoption of Energy Risk Management Regulations (“ERMR”). SJCE operated pursuant to draft ERMR when it commenced transacting in 2018. On March 20, 2019, April 29, 2019, and May 14, 2019, the ROC adopted changes to the draft ERMR, to facilitate SJCE meeting state requirements and other needs. On October 3, 2019, the ROC adopted a full set of ERMR.
22. In May of 2018, the City of San José, as administrator of SJCE, contracted with the Northern California Power Agency (“NCPA”) to provide Scheduling Coordinator services and assist with procurement, including undertaking power and RA solicitations consistent with SJCE’s direction, among other wholesale energy services.¹⁶

IV. SJCE’s RA procurement efforts prior to October 31, 2018.

23. When I joined SJCE, based on my experience and the experience of employees of SJCE and NCPA, I, along with my industry colleagues, expected RA to be limited in 2019, so I directed NCPA to prioritize SJCE solicitations for RA over those for Renewable Portfolio Standard (“RPS”), greenhouse gas-free, and energy resources.

¹³See Item 7.1 on the November 6, 2019, City Council Agenda, found at: <https://sanjose.legistar.com/View.ashx?M=M&ID=610824&GUID=30880974-2ABD-43AF-B478-D389F066D8C7>.

¹⁴A copy of Resolution No. 78574 can be found at: <https://records.sanjoseca.gov/Resolutions/RES78574.pdf>.

¹⁵See Resolution No. 78574, supra, Exhibit A, Section 4.4: “The ROC shall consist of seven voting members: the City Manager, the Director of Community Energy, the Director of Finance, the City’s Risk Manager, the Budget Director, the Community Energy Department’s Deputy Director of Power Resources, and the Community Energy Department’s Division Manager for Administration and Finance.”

¹⁶A copy of that agreement can be found at: <https://records.sanjoseca.gov/Contracts/CON663333-000.pdf>.

- 24.** On June 26, 2018, NCPA issued a solicitation on behalf of SJCE for 2018 RA. SJCE procured all the RA required to comply with its obligations under the program in for 2018.
- 25.** Before October 31, 2018, at my direction and on behalf of SJCE, NCPA issued four solicitations for 2019 RA: on July 11, 2018; September 7, 2018; October 11, 2018; and October 23, 2018.¹⁷
- 26.** All of these solicitations were sent out to over forty (40) recipients (the number of recipients may have evolved somewhat over time as SJCE and NCPA became aware of additional potential sellers)¹⁸; solicitations were also placed on SJCE's new website once created and launched.¹⁹
- 27.** At the conclusion of its first 2019 RA solicitation in late July 2018, SJCE obtained responses that would meet all of its 2019 RA regulatory compliance needs from PG&E. In addition, SJCE obtained bids from Calpine, Merced Irrigation District ("MEID"), and a number of additional sellers. SJCE notified PG&E, Calpine, and MEID of its interest in contracting for RA.
- 28.** With the assistance of NCPA, SJCE entered into negotiations with PG&E, Calpine, and MEID to finalize the quantities it would procure from each of these three entities. With bids accepted, negotiations well underway, and only the exact megawatts ("MW") of procurement to finalize, the newly created SJCE was well positioned to meet all its 2019 RA needs.
- 29.** Without any explanation, PG&E indicated to SJCE during these negotiations that it was withdrawing its bids for System, Greater Bay Area ("GBA"), and PG&E Other RA for the months of July, September and October 2019. PG&E formally communicated this withdrawal in writing on August 16, 2016.²⁰
- 30.** Immediately after PG&E communicated its withdrawal, NCPA and SJCE set out to find alternative sellers to meet SJCE's RA obligations. At my direction and on SJCE's behalf,

¹⁷ I am informed and believe copies of those solicitations were previously produced to the Consumer Protection and Enforcement Division ("CPED") on April 24, 2019.

¹⁸ I am informed and believe that a list of those recipients was previously produced to CPED on April 24, 2019.

¹⁹ I am informed and believe that screenshots of the websites were previously produced to CPED on April 24, 2019.

²⁰ I am informed and believe that a copy of this communication was previously produced to CPED on April 24, 2019.

NCPA issued additional solicitations.²¹ In addition, SJCE procured additional supplies through its participation in the solicitations of CleanPowerSF, PG&E, and PCE.²²

- 31.** SJCE also concluded agreements with Calpine and MEID, while procuring from PG&E amounts it continued to offer for the remainder of the year. Purchasing these amounts from PG&E was done under unfavorable contract terms, as described below. As of October 31, 2018, SJCE had procured 46 percent of its annual System RA needs from PG&E, 40 percent from other sellers; and 14 percent was outstanding.
- 32.** With the assistance from NCPA, SJCE also accepted most of the bids it had received in its first and subsequent solicitations that were still available and met SJCE's outstanding need.²³ Some bids that were initially submitted were no longer available once SJCE returned to bidders after PG&E withdrew its supply.
- 33.** For SJCE's second bid solicitation issued on September 7, only one entity responded. That one bid from Silicon Valley Power was for the sale of Local RA only. SJCE accepted the bid, which resulted in a contract dated October 30, 2018.
- 34.** For SJCE's third bid solicitation issued on October 11, only three entities responded. The bids from CleanPowerSF and Peninsula Clean Energy ("PCE") only offered System and Flexible RA for the months of January, February, April, and May.²⁴ However, the third bid from CalPine was for the sale of Local RA only. Previously, CleanPowerSF had offered to sell System RA for July, September, and October, but July was no longer offered in October, and the amounts for September and October were reduced. As a result, in the contract entered into with CleanPowerSF, dated October 26, 2018, CleanPowerSF did not provide July, and had to reduce the amount of System RA it could sell for September and October.
- 35.** For SJCE's fourth bid solicitation issued on October 23, only three entities responded. The bids from CalPine, Alameda Municipal Power, and PCE only offered to sell Local RA.²⁵

²¹ I am informed and believe copies of those solicitations were previously produced to CPED on April 24, 2019.

²² I am informed and believe copies of those solicitations were previously produced to CPED on April 24, 2019.

²³ I am informed and believe copies of those communications were previously produced to CPED on April 24, 2019.

²⁴ I am informed and believe copies of those communications were previously produced to CPED on April 24, 2019.

²⁵ I am informed and believe copies of those communications were previously produced to CPED on April 24, 2019.

The offers from CalPine and PCE were conditioned on a swap of System RA from SJCE in return for Local RA.

- 36.** In 2018, the ROC used provisions in the draft ERM and its authority to enable SJCE to enter into transactions with counterparties that did not meet the standard ERM credit requirements.
- 37.** Specifically, on August 8, 2018, the ROC authorized SJCE to enter into transactions for 2019 RA with the following (even though these entities may not have been approved counterparties at the time):
- a. MEID: In an amount not to exceed: \$4,400,000 (System 24 MW-mo at \$2/kw-mo; PG&E Local 1029.20 MW-mo at \$4.12/kw-mo;)
 - b. PG&E: In an amount not to exceed \$25,500,000 (System 3342 MW-mo @ \$4.24 kw-mo; GBA Local 860 MW-mo @ \$ 4.11 kw-mo; PG&E local 1840 MW @ \$4.11 kw-mo)
 - c. Calpine: In an amount not to exceed \$6,000,000 (System 250 MW-mo @ \$2.75 kw-mo; GBA Local 1250 MW-mo @ \$4 kw-mo)
- 38.** Additionally, on October 26, 2018, the ROC authorized SJCE to enter into transactions for 2019 RA without credit support with the following (even though these may not have been approved counterparties at the time): MEID (\$4,220,000), CleanPowerSF (\$2,550,000), PG&E (\$723,000), Calpine (\$1,400,000), PCE (\$1,200,000), Alameda Municipal Power (\$220,000), AltaGas \$300,000), ConocoPhillips (\$50,000).
- 39.** On October 16, 2018, the ROC authorized SJCE staff to enter into transactions for additional 2019 RA without credit support as follows (even though the counterparties may not have been approved counterparties): High Desert (\$618,0753), Phases Renewables (\$18,000), PCE (\$81,600), Clean Power Alliance (\$120,900).
- 40.** In utilizing its waiver discretion, the ROC worked to support SJCE's procurement efforts by relaxing strict credit standards.
- 41.** Before October 31, 2018, at my direction and on behalf of SJCE, NCPA also responded to three separate 2019 RA solicitations by CleanPowerSF on September 14, 2018; by PG&E on September 26, 2018; and by PCE on October 26, 2018.²⁶

²⁶ I am informed and believe copies of those solicitations and responses were previously produced to CPED on April 24, 2019.

42. PG&E's withdrawal left San José with large single month gaps to fill during the hardest-to-fill summer months. Filling high interest single months is made more difficult in that certain RA providers prefer now and preferred in 2018-2019, to sell annual strips of RA. In other words, they preferred to sell a constant volume of RA per month over the course of a year.
43. SJCE rejected a small number of bids because the cost would have been substantially above other bids for similar products and well above the Commission's cap of \$40 MW-year. Some sellers would only sell annual strips to SJCE. In these cases, the average cost per MW-month to SJCE would have been unreasonably high because the offer was contingent on accepting amounts in months for which SJCE had already procured all its RA needs. No sellers had the large amount of RA capacity SJCE needed for sale in only the three most difficult-to-fill months of the year.
44. SJCE could, and did, buy some annual strips and sought to sell excess RA in the months in which it did not require RA. However, the months when SJCE did not need RA were the less coveted months. Thus, SJCE had to limit such procurement to avoid creating a significant risk of being unable to sell all the excess, or to have to sell at a significantly discounted price increasing costs for its customers. Purchasing a large volume of unneeded RA would have financially harmed customers, would have been imprudent, and in extreme cases could have been considered a violation of the prohibition against speculative buying.
45. SJCE faced an additional challenge in meeting its RA obligations because the allocated RA requirements changed. After its July solicitation, SJCE procured the amounts it had forecast it would need except in the months of July, September, and October. Then the Commission issued three different RA allocations inside of six weeks. Specifically, on August 10, 2018, the Commission's Energy Division issued its initial allocation. SJCE's September 7, 2018, solicitation reflected the revised allocation. However, the allocation was revised on September 20, 2018, and again on September 27, 2018.
46. In order to meet its RA requirements, SJCE accepted difficult contract terms that are not consistent with the City of San José's contracting practices. For example, SJCE accepted PG&E's insistence on use of New York law for RA transactions even though the City of San José does not typically accept contract clauses for law other than California law. Moreover, SJCE did not think use of New York law was reasonable in this context as the transaction is taking place in California; the RA program is a California program; both San José and PG&E

reside in California; and the Commission's required terms for Renewables Portfolio Standard transactions require use of California law. In addition, SJCE accepted PG&E terms conditioning collateral requirements on PG&E remaining the supplier of last resort and providing transmission and distribution services to and operate as the billing agent for SJCE customers. Finally, even though PG&E's financial condition was known to be precarious,²⁷ SJCE had to accept collateral terms that precluded SJCE from ever making a collateral call on PG&E, but allowed PG&E to make collateral calls on SJCE.

47. During the months of August and September, I met with Commission Energy Division staff to discuss the Local RA obligations assigned to SJCE for January and February of 2019 based on SJCE's projected load in August of 2019. I explained that this would result in a need by SJCE to procure Local RA in an amount more than nineteen times its entire January 2019 load and twenty times its entire February 2019 load. I explained that this allocation was contrary to the anti-cost-shift obligation under statute and the intent of Resolution E-4907. At the end of September, the Energy Division informed SJCE that it had not identified a basis for SJCE not to procure these amounts.
48. SJCE procured Local RA in an amount more than nineteen times its entire January 2019 load. The City of San José also commenced Phase 2 of SJCE's customer phase-in plan in February 2019, rather than in March as previously planned, in order to minimize the cost shift from having to procure Local RA in amounts disproportionate to its load.
49. The three days before the October 31 year-ahead filing deadline were particularly chaotic as Load Serving Entities ("LSEs") and CCAs tried to cure their respective RA deficiencies. In those three days, SJCE staff witnessed Investor Owned Utilities offering to sell RA, only to see those offers suddenly withdrawn within days, even hours.

V. SJCE Continued to Make Procurement Efforts Following the October 31, 2018 Deadline.

50. After the YA deadline, SJCE continued its efforts to cure its RA deficiencies.
51. After the October 31, 2018, compliance filing deadline, at my direction and on behalf of SJCE, NCPA issued further solicitations for 2019 RA on November 2, 2018, November 13, 2018, January 18, 2019, March 22, 2019, and July 19, 2019.

²⁷ On Jan. 29, 2019, PG&E filed for Chapter 11 bankruptcy, as noted here: <https://www.cpuc.ca.gov/industries-and-topics/pge/pge-bankruptcy>.

- 52.** These solicitations were sent out to over forty (40) recipients (the number of recipients may have evolved somewhat over time as SJCE and NCPA became aware of additional potential sellers) and solicitations were included on SJCE's website.
- 53.** After October 31, 2018, at my direction and on behalf of SJCE, NCPA also responded to fourteen (14) separate 2019 RA solicitations (1) by PG&E on November 5, 2018; (2) by CleanPowerSF on November 9, 2018; (3) by PG&E on November 14, 2018; (4) by Clean Power Alliance ("CPA") on November 27, 2018; (5) by AltaGas on November 29, 2018; (6) by SCE on January 9, 2019; (7) by CPA on February 8, 2019; (8) by SCE on March 7, 2019; (9) by CalPine on April 10, 2019; (10) by City of Lancaster on May 7, 2019; (11) by PG&E on May 17, 2019; (12) by City of Roseville on June 24, 2019; (13) by PG&E on July 5, 2019; and (14) by PG&E on July 26, 2019.²⁸
- 54.** On November 9, 2018, December 4, 2018, December 19, 2018, January 4, 2019, February 27, 2019, and March 8, 2019, the ROC accepted credit ratings and transaction limits for counterparties selling needed products including RA, in order to facilitate SJCE's ability to continue to cure the 2019 YA RA deficiencies and comply with 2019 month-ahead RA requirements. Some of these adjustments were made irrespective of the financial quality of counterparties to maximize SJCE's opportunity to comply with RA and RPS requirements.
- 55.** On March 20, 2019, the ROC authorized SJCE to buy and sell RA with only the following limitations:
- a. SJCE will not purchase more than expected need.
 - b. SJCE will stay in projected RA cost:
 - i. Currently projected: 2019: \$43.5M; 2020: \$26M; 2021: \$26.5M; 2022: \$26.5M
 - c. SJCE will strive to work with the most credit worthy counterparties.
 - d. SJCE will report purchases and sales to the ROC on a monthly basis.
- 56.** After obtaining this procurement flexibility from the ROC, in addition to issuing formal solicitations, I directed NCPA and my staff to contact counterparties throughout the procurement process with the purpose of obtaining sufficient supply to meet SJCE's 2019 month-ahead RA compliance requirements.

²⁸See the concurrently submitted Prepared Testimony of Anthony Zimmer (K.19-03-024) (March 25, 2025) at 7.

57. Due to these efforts, SJCE was able to procure additional 2019 RA, and cured a significant portion of the YA RA shortfall in advance of the Month-Ahead RA filing deadline. As shown in the table below, SJCE was 870.86 MW short in its 2019 RA YA filing. SJCE was only 465.98 MW short of its 2019 RA YA requirement by the Month-Ahead RA filing deadlines. Thus, SJCE cured 404.88 MWs of the YA shortfall, or 46%, in a tight RA market. By the Month-Ahead RA filing deadline, SJCE was required to procure 100% of its RA obligation in each month, whereas by the YA RA filing deadline, SJCE was only required to procure 90% of its RA obligation for the months of May through September. In the Month-Ahead timeframe, SJCE was short a total of 580.59 MWs in 2019.

	YA Requirement*	YA Provided*	Shortfall*	MA Requirement	MA Provided	Shortfall from YA	Shortfall from MA	Increase from YA filing
July	883	482.39	400.61	938	808.39	75	129.61	326
September	984	388.47	595.53	1044	593.02	390.98	450.98	204.55
Total	1,867	870.86	996.14	1982	1401.41		580.59	

* Source, Table 1 of Citation and calculation.

58. The following table describes the timeline of events with respect to SJCE's procurement efforts for its 2019 YA Local, Flexible, and System RA obligations:

Date	Action
August 29, 2017	San José City Council approved SJCE's implementation plan.
January 30, 2018	San José City Council approved revisions to the launch schedules to September 1, 2018 for municipal accounts, and March 1, 2019 for the remainder of San José's residents and businesses.
July 11, 2018	SJCE issues a solicitation for 2019 RA.
August 9, 16, 2018	PG&E notifies SJCE orally and then in writing that it is withdrawing quantities for July, September and August.
August 10, 2018	The CPUC issued its initial RA allocation.
August-September 2018	SJCE has conversations with Energy Division about Local RA requirements for January and February.

Date	Action
September 7, 2018	SJCE issues 2nd solicitation for 2019 RA.
September 10, 2018	The CPUC revised its initial RA allocation.
September 14, 2018	SJCE submits bid in CleanPowerSF solicitation.
September 26, 2018	SJCE submits bid in PG&E solicitation.
September 27, 2018	The CPUC issued the final RA allocation.
October 11, 2018	SJCE issues 3rd solicitation for 2019 RA.
October 23, 2018	SJCE issues 4th solicitation for 2019 RA.
October 26, 2018	SJCE submits bids in PCE solicitation.
October 31, 2018	SJCE submits 2019 YA compliance filing and waiver request
November 2, 2019	SJCE issues 5th solicitation for 2019 RA.
November 5, 2019	SJCE submits bid in PG&E solicitation
November 9, 2018	SJCE submits bid in CleanPowerSF 2019 RA solicitation
November 10, 2018	SJCE issued a solicitation that included outstanding 2019 RA amounts.
November 14, 2018	SJCE responds to PG&E 2019 RA solicitation
November 27, 2018	SJCE responds to CPA 2019 RA solicitation
November 29, 2018	SJCE responds to AltaGas 2019 RA solicitation
January 9, 2019	SJCE responded to SCE 2019 RA solicitation
January 18, 2019	SJCE issues 6th solicitation for 2019 RA.
February 8, 2019	SJCE submits bid in CPA 2019 RA solicitation
February 15, 2019	CPED issues \$6.81 million citation to SJCE
February 27, 2019	CPED revises its SJCE citation to \$6.79 million
March 7, 2019	SJCE submits bid in SCE 2019 RA solicitation

Date	Action
March 22, 2019	SJCE issues 7th solicitation for 2019 RA.
April 10, 2019	SJCE submits bid in CalPine 2019 RA solicitation
May 7, 2019	SJCE submits bid in City of Lancaster 2019 RA solicitation
May 17, 2019	SJCE submits bid in PG&E 2019 RA solicitation
June 24, 2019	SJCE submits bid in City of Roseville 2019 RA solicitation
July 5, 2019	SJCE submits bid in PG&E 2019 RA solicitation
July 19, 2019	SJCE issues 8th solicitation for 2019 RA.
July 26, 2019	SJCE submits bid in PG&E 2019 RA solicitation

VI. San José Clean Energy Utilized Aggressive Procurement Practices and Pricing in its Efforts to Procure its 2019 RA Requirements.

- 59.** SJCE tried to make its procurement process and contracts simple and non-controversial to procure RA as quickly as possible. SJCE’s proposed contract terms in all its solicitations followed industry standards, and SJCE attached its customized versions of the Edison Electric Institute (“EEI”) Master Agreement coversheet and the confirmation for use with the Western Systems Power Pool (“WSPP”) Agreement.²⁹ SJCE indicated to winning bidders its desire to use these or earlier versions of these forms, but where bidders sought to use their preferred forms, NCPA and SJCE worked with bidders to come to an agreement using their preferred forms.
- 60.** SJCE paid \$32,961,565 for 2019 RA. The penalty assessed for SJCE is \$6,791,155, resulting in an overall cost for SJCE RA in 2019 of \$39,752,720.
- 61.** The increase in prices for 2019 RA meant that LSEs like SJCE that were only able to start buying RA for 2019 in late 2018 paid significantly more than LSEs that could begin procuring earlier. According to the CPUC’s 2019 Resource Adequacy report, the weighted

²⁹ I understand and believe that copies of those customized versions of those agreements were previously produced to CPED on April 24, 2019.

average price LSEs paid for 2019 RA was \$3.46.³⁰ In contrast, SJCE paid an overall weighted average price of \$4.27 per kW/mo for 2019 RA. Had SJCE been able to buy all the RA it needed in 2019 at the weighted average price of \$3.46 in the CPUC 2019 Resource Adequacy Report,³¹ its total RA costs would have been \$24,950,060, \$14,802,660.40 less than the \$39,752,720 it paid.

- 62.** PG&E issued a solicitation to sell January 2019 RA on October 31, 2018, after the RA purchased by respondents could count towards the YA obligation. PG&E issued a second solicitation to sell February through December 2019 RA on November 8, 2018. SJCE is unaware of any reason why PG&E could not have made these volumes available before the annual RA compliance filing deadline.

VII. San José Clean Energy Acted as a Responsible RA Market Participant

- 63.** Its procurement of RA after the October 31, 2018 deadline allowed SJCE to cure its July and October 2019 Flex RA deficiencies. However, SJCE still had deficiencies in System RA for July and System and Flex RA for September. The table below compares the deficiency amounts from the citation and contrasts them against the deficiency amounts at the end of 2019.

	July 2019	September 2019	October 2019
System (1/23/19)	400.61	559.53	--
System (12/31/19)	129.61	450.98	--
Flex (1/23/19)	12.10	99.10	41.10
Flex (12/31/19)	--	108.10 ³²	--

³⁰ See 2019 Resource Adequacy Report, p. 22, Table 6, available at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/2019rareport-1.pdf>

³¹ See <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/community-choice-aggregation-and-direct-access/2019-final-calculation-of-the-pcia-market-price-benchmarks.pdf>.

³² The reason why SJCE's deficiency for Flex RA in the month of September 2019 appears to have increased because SJCE only had to acquire 90% of its Flex requirement by the YA filing on October 31, but it had to acquire 100% of it Flex requirement by the Month-Ahead filing. SJCE's resulting deficiency is not higher, however, because its structured Mid-Year Adjustment calculated by the CPUC in June 2019 resulted in a lower total Flex requirement for September 2019.

64. Even though SJCE did not receive a citation or penalty for its Local RA deficiencies, SJCE also continued its efforts to cure its Local RA deficiencies after the YA deadline. For the month of January 2019, SJCE purchased Local RA from PCE on November 14, 2018. For the month of February 2019, SJCE purchased Local RA from CleanPowerSF on November 27, 2018. For the month of May 2019, SJCE purchased Local RA from Pilot Power Group on March 18, 2019. For the month of July 2019, SJCE purchased Local RA from Pilot Power Group on April 19, 2019. For the month of September 2019, SJCE purchased Local RA from Silicon Valley Clean Energy on April 29, 2019. And for the month of October 2019, SJCE purchased Local RA from Silicon Valley Clean Energy on April 29, 2019, and East Bay Community Energy Authority on August 13, 2019.
65. Due to these efforts, SJCE was able to cure many, but not all, of its monthly Local RA deficiencies. For most of the months in which there were still Local RA deficiencies, SJCE was able to decrease the amounts by which it was deficient. The table below compares the deficiency amounts from October 31, 2018, and contrasts them against the deficiency amounts at the end of 2019.

	Jan-19	Feb-19	May-19	July-19	Sept-19	Oct-19	Dec-19
GBA (10/31/18)	--	76.9	11.9	4.7	29.9	15.9	4.9
GBA (12/31/19)	--	62.95	--	--	1.95	--	--
PG&E Other (10/31/18)	4.4	162.0	10.1	132.1	158.1	153.9	5.3
PG&E Other (12/31/19)	--	162.0	10.1	98.1	138.1	131.89	--

66. Based on the above, I believe SJCE acted aggressively and in good faith to procure sufficient RA for its 2019 YA and Month-Ahead requirements., and reasonably and in good faith responded to solicitations of others.

VIII. San José Clean Energy's Financial Resources Did Not Support the Assessment of the Penalty Amount.

67. San José Clean Energy is an enterprise program of the City of San José. As such, SJCE's expenditures are funded by its revenues. In 2018, SJCE received from the City of San José's Financing Authority a one-time amount of \$10 million in start-up funding. Outside of the initial start-up funding, SJCE receives no support from the City's General Fund, although the City has, when necessary, made available to SJCE commercial paper loans that must be repaid.

68. As a City program, SJCE does receive organizational support. For example, the Director of SJCE reports directly to the City Manager, and SJCE has access to the advice and leadership of the City's senior management team. The City's Finance Department established SJCE's chart of accounts and developed its internal accounting processes and procedures during its start-up phase. The City's Environmental Services Department, which oversees several City utilities, assisted in the preparation of SJCE's start-up plan.
69. In addition to San José Clean Energy, the City of San José operates and manages three enterprises, including:
- a. The Norman Y. Mineta San José International Airport, which served approximately 14.9 million passengers in FY 2018-19.
 - b. The San José -Santa Clara Regional Wastewater Facility, which serves 1.4 million residents and over 17,000 businesses in eight cities and four sanitation districts.
 - c. Additionally, the City has experience operating utilities. Its water utility, San José Municipal Water, has been operated by the City since 1961. It serves approximately 100,000 customers and is the fourth largest water retailer in the County of Santa Clara.
70. Each of these enterprises and utilities generates sufficient funding through rates and charges to maintain operations and sufficient reserves.
71. To ensure the financial viability of SJCE in its first year of operation, the City's Finance Department solicited for a Revolving Credit Agreement that provided both a Line of Credit and a Letter of Credit, and in November 2018, SJCE executed the Agreement with Barclays Bank PLC.³³ The Agreement was subsequently amended in May 2019 to increase the aggregate commitment from \$50 million to \$80 million, of which no more than \$30 million was available as cash draws (advances) against a revolving Line of Credit.
72. Advances under the Line of Credit (up to \$30 million) were only to be used to fund start-up and long-term costs for operational working capital, which would include the purchase of electrical power. The remainder of the commitment, \$50 million, was provided in the form of Letters of Credit that are legal promises to pay when collateral calls are made against

³³ A copy of that Revolving Credit Agreement can be found at:
<https://records.sanjoseca.gov/Contracts/CON664282-000.pdf>.

SJCE. The specifics on collateral requirements were unique to each power purchase agreement and the Letters of Credit provided the necessary flexibility to satisfy these requirements.

73. As a start-up enterprise in its second year of operation, SJCE's chance at viability was seriously threatened in having to divert \$6.8 million of funding from operations toward payment of the citation. Under the Revolving Credit Agreement, SJCE was required to maintain an operating reserve of \$20 million by December 31, 2019. Payment of the Penalty constrained SJCE and jeopardized its ability to meet that operating reserve requirement.

IX. The Commission's Factors Do Not Support the Level of Penalty Imposed.

74. Even at the time the Penalty was first applied, SJCE's shortfall was no more than 22.3% of the YA System RA obligation notwithstanding the fact that the RA market was very constrained in 2019. By the Month-Ahead filing deadline, SJCE's shortfall for the month ahead requirements was only 8% of the full Month-Ahead requirement for the year or 10% of the Month-Ahead requirement for months May through September (the YA showing months). In contrast, the penalty amounted to 21% of the total 2019 RA expenditures for SJCE of \$32,962,000. Even if one adds to the amounts SJCE spent for RA in 2019, \$3,103,427 (the final uncured shortfall amount of 465.98 MW times the Penalty amount of \$6.66 kw-mo), the Penalty is still 18% of the costs, for an ultimate shortfall of 8-10% (depending on the metric used).
75. SJCE never contested that it was in fact short, and paid the Penalty promptly. SJCE ratepayers absorbed the Penalty without SJCE having an opportunity to present evidence relating to the propriety of the Penalty for six years.
76. SJCE is a governmental entity with no excess resources or shareholders to absorb a penalty such as the Penalty applied by the Commission. Because SJCE is a governmental entity, the only sources of funds to pay the Penalty were customers through higher rates for electric service or San José taxpayers. In 2019, 21.5% of SJCE's residential customers participated in the CPUC California Alternate Rates for Energy program ("CARE") or the CPUC Family Electric Rate Assistance program ("FERA"), and 19.69% of all SJCE customer accounts were CARE/FERA.

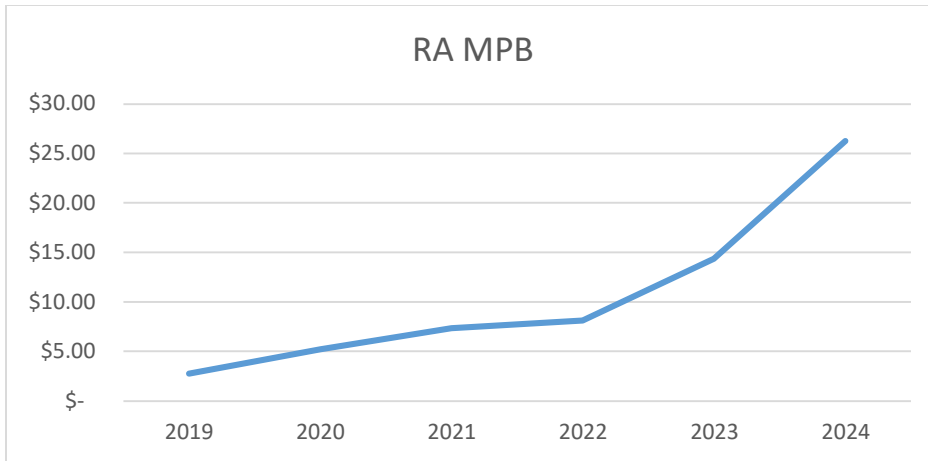
77. In December of 2024, according to the U.S. Energy Information Administration, California electric rates were the 4th most expensive of all 50 states at an average of \$25.16.³⁴
78. In 2024, 31 percent of people in Silicon Valley lived below self sufficiency standards.³⁵ Statistics in 2019 were likely similar.
79. In 2022, 31 percent of people in San Mateo and Santa Clara were at risk of food insecurity.³⁶ Statistics in 2019 were likely similar.
80. At the time the Commission applied the Penalty, SJCE was a new CCA with no reserves because it had not had time to build up a reserve. The Commission's application of a large penalty at the commencement of SJCE's operation before SJCE had an opportunity to build a reserve was particularly challenging for the program to manage.
81. Because SJCE continued to cure its RA deficiencies in advance of the Month-Ahead filing deadline, and did in fact cure 46% of the shortfall, SJCE's ratepayers paid for RA twice for the amount that SJCE cured. For the deficiency that was cured, SJCE customers paid for the RA that SJCE bought in the market to cure its deficiency, and SJCE customers paid the Penalty because, as explained above, as a government entity, SJCE does not have shareholders to absorb a CPUC penalty.
82. Since the Commission declined to give SJCE credit for curing YA deficiencies prior to the Month-Ahead filing deadline in applying a penalty for a YA shortfall, SJCE stopped buying RA to cure YA deficiencies it received a CPUC penalty for, as this would continue to expose its customers to double paying for RA.
83. CPUC penalties for Year and Month Ahead shortfalls do nothing to add capacity to the California electric market as these penalties are paid to the general fund.
84. By the CPUC's own calculations, since 2019 when the CPUC implemented its rote application of RA penalties, RA prices have increased by almost a factor of ten, as demonstrated by the trajectory of the RA Market Price Benchmark used to establish PCIA.³⁷

³⁴ See https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_5_6_a.

³⁵ See <https://siliconvalleyindicators.org/data/economy/income/income-adequacy/share-living-below-self-sufficiency-standards/>.

³⁶ See <https://siliconvalleyindicators.org/data/economy/income/income-adequacy/households-at-risk-of-food-insecurity/>.

³⁷ Calculated from data available at: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/power-charge-indifference-adjustment>.



- 85.** If the Commission refunds to SJCE all or some of the Penalty it applied for the YA shortfall in 2019, these funds would be credited to SJCE’s budget and would be considered in establishing customer rates for 2026.
- 86.** I understand that SJCE’s Penalty of nearly \$6.8 Million (assessed in SJCE’s second year of operation) was the largest RA citation penalty that had ever been assessed under the program by a factor of nearly four times until 2023.³⁸
- 87.** Based on the above, I believe that the totality of circumstances renders the amount of the assessed Penalty against the public interest.

Dated: March 25, 2025, in San José, California

³⁸ A list of Citation penalties maintained by the Commission at: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/ueb/energy-citations/2025/feb-2025-ueb-energy-citations.pdf>.