BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005 (Filed May 5, 2011)

OPENING COMMENTS OF THE JOINT PARTIES ON COMPLIANCE AND ENFORCEMENT ISSUES

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In accordance with the September 27, 2013 Administrative Law Judge's Ruling Requesting Comments on Compliance and Enforcement Issues in the Renewables Portfolio Standard Program ("ALJ Ruling"), 3 Phases Renewables, ConEdison Solutions, EDF Industrial Power Services, and Tiger Natural Gas (hereinafter collectively referred to as the "Joint Parties") hereby submit these opening comments.[1]

I. INTRODUCTION

The Joint Parties are electric service providers ("ESPs") that have relatively small customer loads or have not yet entered the California direct access market. As such, the Joint Parties face circumstances and difficulties related to compliance with the Renewables Portfolio Standard ("RPS") that may be particular to them and other retail sellers with small loads, including new market entrants. In the comments that follow, the Joint Parties present their collective views and recommendations with respect to the RPS compliance and enforcement

[1] The ALJ Ruling provided that opening comments may be filed on or before October 21, 2013. In a subsequent ruling, the due date for opening comments was extended to October 25, 2013. Concurrent with the filing of these opening comments, the Joint Parties have filed a Motion to Accept Late-Filed Comments.

issues set forth in the ALJ Ruling. Importantly, the Joint Parties are not seeking any special treatment for themselves; rather, the Joint Parties' sole, limited objective is to ensure that the compliance and enforcement rules and procedures adopted in this proceeding do not unfairly penalize or otherwise disadvantage ESPs and other retail sellers with small loads.

II. COMMENTS IN RESPONSE TO ALJ RULING QUESTIONS

For ease of reference, the Joint Parties' comments are organized under the same section headings and numbering system used in the ALJ Ruling.

3.1. Compliance Reports for Final Year of Compliance Period

1. Should the annual report for the last year of a multi-year compliance period be formally filed, as well as served on the service list of the then-current RPS proceeding and provided to Energy Division staff? What benefits, if any, would filing provide? What problems, if any, would filing create?

No. The additional administrative burden associated with formal filings should not be imposed on retail sellers absent a compelling reason for doing so. In addition to the administrative burden associated with the initial filing of RPS compliance reports, there is also the potential burden associated with the refilling of reports for various reasons. For example, nearly if not all registered ESPs have at one time or another been required to resubmit a report in order to correct minor data input errors and formatting errors that occur when Excel files are converted into PDF. A fair number of retail sellers have also been required to resubmit reports to undo redactions as staff's understanding and interpretation of the confidentiality rules has evolved and shifted over time. A formal filing requirement would also raise the question of whether retail sellers would be required to re-file their reports once the confidentiality period for a particular set of reports expires.

Each time a retail seller is required to resubmit (or, potentially, re-file) a compliance report, it imposes administrative costs on the company that must be passed on to its customers. Unless such costs are warranted by a compelling public purpose, which in this case does not seem to be the case, they should not be imposed on retail sellers.

2. **Should the annual report for each one-year compliance period (2021 and later years) be formally filed, as well as served on the service list of the then-current RPS proceeding and provided to Energy Division staff? What benefits, if any, would filing provide? What problems, if any, would filing create?**

See comments in response to Question 1 above.

3. **Should the updated annual report for the last year of a multi-year compliance period be formally filed, as well as served on the service list of the then-current RPS proceeding and provided to Energy Division staff? What benefits, if any, would filing provide? What problems, if any, would filing create?**

See comments in response to Question 1 above.

4. **Should the updated annual report for each one-year compliance period (2021 and later years) be formally filed, as well as served on the service list of the then-current RPS proceeding and provided to Energy Division staff? What benefits, if any, would filing provide? What problems, if any, would filing create?**

See comments in response to Question 1 above.

5. **Should parties to the then-current RPS proceeding be allowed to comment on the annual report for the last year of a compliance period? Why or why not?**

No. The Commission's review of RPS compliance reports goes to one issue: compliance. Whether or not a retail seller is in compliance is an "up or down" proposition that depends on the retail seller having met (or not met) its RPS procurement obligations under the rules. There is no room in such administrative determinations for third parties to comment. Indeed, the Commission has never allowed third parties to comment on RPS compliance reports in the past. Doing so now would only impose additional burdens and costs on retail sellers, who would be compelled to respond to third-party comments, without any clear corresponding public benefit.

6. **Should parties to the then-current RPS proceeding be allowed to comment on the annual report for any year of a compliance period? Why or why not?**

See comments in response to Question 5 above.

3.2. Waiver of Portfolio Quantity Requirement

1. **The statute provides that the Commission "shall waive enforcement of this section if it finds that the retail seller has demonstrated any of [the listed] conditions. . ."**

   - **Does the Commission have discretion to waive enforcement of the procurement quantity requirement (PQR) for any conditions that are not listed in Section 399.15(b)(5)? Why or why not?**

Yes, the Commission has discretion to waive enforcement of the PQR for reasons other than the conditions listed in Section 399.15(b)(5). For the large investor-owned utilities ("IOUs") that are subject to its general jurisdiction, the Commission's discretion derives from its broad authority under Section 701 to "do all things…which are necessary and convenient in the exercise of such power and jurisdiction."[2] For ESPs and other non-IOU retail sellers over which the Commission has only limited authority for purposes of the RPS program, the discretion to waive the PQR for reasons other than those listed in Section 399.15(b)(5) derives from the Commission's express statutory authority to determine "the manner" in which such entities "participate in the [RPS] program."[3]

Importantly, the waiver conditions listed in Section 399.15(b)(5) are in large part only relevant and applicable to the IOUs as owners of generation and transmission assets, and are conversely largely irrelevant and inapplicable to ESPs. For example, no ESP has the ability to "develop and construct new transmission lines or upgrades to existing lines intended to transmit electricity generated by eligible renewable energy resources."[4] Nor, given current

[2] All statutory references herein are to the Public Utilities Code.
[3] *See* D.05-11-025 at 10-13; *see also* D.06-10-019 and D.11-01-026.
[4] *See* Section 399.15(b)(5)(A)(i).

regulatory and market conditions, are most ESPs in a position to develop "its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or [utility scale] energy storage used to integrate eligible renewable energy resources."[5] Moreover, ESPs with relatively small loads do not have the ability to develop the large and highly diversified RPS portfolios that appear to be contemplated by Section 399.15(b)(5).

As it would be fundamentally unfair for the waiver provisions of Section 399.15(b)(5) to be available, as a practical matter, to the IOUs and not to other classes of retail sellers, it is reasonable and entirely appropriate for the Commission to exercise its discretion to "level the playing field" in this regard such that waiver of the PQR is potentially available to ESPs and other non-IOU retail sellers for reasons other than those listed in Section 399.15(b)(5).

- **If the Commission does have such discretion, for what additional conditions may it exercise its discretion to waive enforcement of the PQR? Please provide rationales that address both legal and practical implementation perspectives.**

While it is not possible and thus would not be productive to attempt to identify in advance all of the conditions besides those listed in Section 399.15(b)(5) that could result in a retail seller being unable to meet the PQR, the Joint Parties urge the Commission to be cognizant of the possibility that newer market entrants may encounter difficulties and challenges in meeting their PQRs that are particular to their situations.

For example, ESPs with relatively small loads may be unable to source a sufficient amount of reasonably-priced RPS products to meet their PQRs. While to the knowledge of the Joint Parties this situation has not yet arisen in the context of the RPS program, it has arisen in the context of the Resource Adequacy ("RA") program, where RA suppliers have attempted to

[5] *See* Section 399.15(b)(5)(B)(ii).

extract unreasonably high rents from ESPs that have small loads and therefore small RA requirements. Were this problem to arise in the context of the RPS, an affected ESP would face the equally undesirable options of either (a) incurring inflated costs that it must either pass on to customers or absorb, or (b) paying non-compliance penalties.

Another PQR-related problem that ESPs with relatively small loads have encountered is finding willing counterparties for long-term contracts. Executing a long-term contract each compliance period is a condition for a retail seller's procurement under shorter-term contracts to be counted toward its RPS requirements.[6] ESPs that have encountered this difficulty face having all of their procurement under short-term contracts being disallowed, even if they have procured sufficient RPS resources under those contracts to meet their PQRs (if not for the disallowance). Imposing such a severe penalty on a retail seller for circumstances that are beyond its control would be unfair and unjust.

In order to provide relief for ESPs and other retail sellers that may face such situations, the Joint Parties recommend that the Commission expressly recognize an additional, general condition for waiver of the PQR: the inability to meet the PQR despite having made "commercially reasonable efforts" to do so. The Joint Parties recommend that this standard apply not only to the two situations discussed above, but also to other situations where the requirements for the conditions listed in Section 399.15(b)(5) are by their nature inapplicable to the retail seller seeking the waiver.

[6] *See* Section 399.13(b); *see also* D.12-06-038 at 39-40.

2. **Should the Commission specify now how it will interpret certain key terms in the statutory requirements (e.g., "all reasonable operational measures," in Section 399.15(b)(A)(ii); or "prudently managed portfolio risks," in Section 399.15(b)(B)(i))? Should the Commission make its interpretation only in the context of a waiver request made by a retail seller? Why or why not?**

   - **If the Commission should specify its interpretation of key terms now, what terms should be included? Please provide a proposed interpretation for each such term.**

   - **If the Commission should wait to interpret key terms, should the Commission provide any guidance in the interim to retail sellers about the grounds for waiver? If yes, please propose the form such guidance should take.**

Whether or not a retail seller has met the requirements for a waiver could vary depending on factors that may be different for different classes and sizes of retail sellers. Therefore, the Commission should not specify in advance what actions and circumstances it would consider to be sufficient (or insufficient) to meet those requirements; rather, such determinations should be made in the context of actual waiver requests. That being said, some advance guidance from the Commission could be helpful to retail sellers, as long as it is not determinative of whether factors and actions or circumstances that do not fall within those guidelines would or would not be considered in the context of individual waiver requests.

3. **How should a retail seller's waiver request be submitted?**

Of the options set forth in the ALJ Ruling, the Joint Parties support requiring PQR waiver requests to be submitted to the Energy Division and served on the service list for the then open RPS proceeding, at the same time and as part of the requesting retail seller's submission of its annual compliance report for the last year in a compliance period.

4. **Should comment by parties to the then-current RPS proceeding be allowed on requests for waivers? Why or why not? If comments should be allowed, at what point should they be made?**

No. The adjudication of waiver request should be a ministerial in nature and based solely on the facts presented; the process should not be influenced by third parties that may have financial or other self-serving interests in the outcome.

5. **What minimum amount and type of information, if any, should be included in the waiver request? For example, should the retail seller be required to specify the condition(s) in Section 399.15(b)(5) on which it relies? Please explain the basis for the information specified.**

While each waiver request should of course include sufficient information for the Commission to make its determination, it would not necessarily be helpful or productive for the Commission to specify in advance exactly what information is required to support the claims underlying particular waiver requests.

6. **What kind of showing should the Commission require in order for a retail seller to "demonstrate that any of the [listed] conditions are beyond the control" of the retail seller?**

See comments in response to Question 5 above.

7. **Should a retail seller be required to make a separate showing that one or more of the listed conditions prevented its compliance with its PQR? If yes, what kind of showing should the Commission require?**

See comments in response to Question 5 above.

8. **Must any required showings for a waiver be made through evidentiary hearings? Why or why not?**

No. In most if not all cases, a sworn affidavit should be sufficient for purposes of the required showing. If, however, a waiver request is denied, the retail seller should have the option of appealing that determination to the Commission, and in such circumstances it may be appropriate to conduct a hearing before an ALJ if so requested by the retail seller.

9. **If such showings may be made without evidentiary hearings, what format should the Commission require?**

See comments in response to Question 8 above.

10. **Should the Commission require a retail seller to apply all available excess procurement to the compliance period at issue prior to seeking a waiver of PQR?**

As a general matter, a retail seller should not be granted a waiver of the PQR for a given compliance period if it has sufficient "excess procurement" from a prior period to cover the underlying deficit. There may be circumstances, however, where such a requirement would be unfair or otherwise contrary to the interests of justice. Accordingly, the Joint Parties recommend that the Commission determine on a case-by-case basis whether and how much excess procurement should be applied by a retail seller to the procurement deficit underlying its PQR waiver request.

3.3. Reduction of Procurement Content Requirement

1. **How should a retail seller's request for reduction of its procurement content requirement be submitted?**

Of the options set forth in the ALJ Ruling, the Joint Parties support requiring requests for waivers of a Portfolio Content Category ("PCC") requirement to be submitted to the Energy Division and served on the service list for the then open RPS proceeding, at the same time and as part of the requesting retail seller's submission of its annual compliance report for the last year in a compliance period.

2. **Should comment by parties to the then-current RPS proceeding be allowed on requests for reduction of procurement content requirements? Why or why not? If comments should be allowed, at what point should they be made?**

No. The adjudication of waiver request should be a ministerial in nature and based solely on the facts presented; the process should not be influenced by third parties that may have

financial or other self-serving interests in the outcome.

3. **Section 399.16(c) sets out minimum and maximum procurement percentages for resources defined in Section 399.16(b)(1) ("Category 1" resources) and Section 399.16(b)(3) ("Category 3" resources). Does the Commission's discretion to grant a reduction apply exclusively to obligations under Category 1 resources? Why or why not?**

The Commission's discretion in this regard clearly extends to all three resource categories, as the statutory language encompasses all three rather than just Category 1.[7] As a practical matter, however, waiver requests will presumably be with respect to the minimum requirement for Category 1 resources, which a retail seller would ask to be reduced. In some cases, it is possible that a retail seller that is granted reduction in Category 1 could "make up" the shortfall with proportional increases Category 2 and Category 3 resources it had already procured. But in most cases, the retail seller is likely to request a partial waiver of its Procurement Quantity Requirement, which presumably would apply proportionately to all three resource categories.

4. **Section 399.16(e) requires a retail seller seeking a reduction to meet the requirements of Section 399.15(b)(5). Should the Commission apply the same rules and procedures it develops for waivers of PQR under Section 399.15(b)(5) to determining requests for a reduction in a procurement content requirement? Why or why not?**

Yes, they should be the same. There does not appear to be any compelling reason to adopt different procedures for the two types of waiver requests. Moreover, in some if not all cases a retail seller is likely to request waivers of both the PQR and one or more of the PCC requirements. In such cases, administrative efficiency suggest having both requests set forth in the same document and reviewed under the same process.

[7] Section 399.16(e) provides in pertinent part: "A retail seller may apply to the commission for a reduction of a procurement content requirement of subdivision (c)."

5. **If the Commission should not apply the same rules and procedures, what rules and procedures should the Commission institute for requests for reductions of procurement content requirements? Please provide rationales that address both legal and practical implementation perspectives.**

See comments in response to 4 above.

6. **Does the grant of a reduction in a procurement content requirement also reduce the retail seller's PQR for the compliance period? Why or why not?**

Yes. Section 399.15(c)(9) provides "Deficits associated with the compliance period shall not be added to a future compliance period." Presumably, a retail seller seeking a waiver will only be able to submit its waiver request at the same time it submits its compliance report for the last year of the compliance period—that is, in the year after the last year of the compliance period. That being the case, Section 399.15(c)(9) effectively precludes the Commission from requiring a retail seller that has been granted a procurement content waiver to "make up" the underlying procurement deficit in the next compliance period. Accordingly, any reduction granted with respect to a procurement content requirement for a given compliance period automatically should normally result in a corresponding, one-for-one reduction in the retail seller's PQR for that period.

7. **If the Commission were to grant a reduction of a retail seller's Category 1 obligation, does the Commission have the authority to impose a requirement that the retail seller must make up the amount of the reduction through procurement of Category 2 (Section 399.16(b)(2)) or Category 3 (Section 399.16(b)(3)) resources? Why or why not?**

No. For the same reason discussed in the Joint Parties' comments in response to Question 6 above, the Commission cannot require a retail seller that has been granted a waiver of the Category 1 minimum procurement requirement for a particular compliance period to "make up" the underlying deficit with additional procurement in the next compliance period, whether of Category 1 resources or Category 2 and Category 3 resources.

8. **If the Commission has the authority to require a retail seller to make up the amount of any reduction, under what circumstances should the Commission require a retail seller to do so? Please provide rationales that address both legal and practical implementation perspectives.**

See comments in response to Questions 7 and 8 above.

9. **Should the Commission require a retail seller to apply all available excess procurement in the relevant portfolio content category to the compliance period at issue, prior to seeking a reduction in a category requirement?**

As a general matter, a retail seller should not be granted a procurement content requirement reduction for a given compliance period if it has sufficient "excess procurement" of that applicable resource category from a prior period to cover the underlying deficit. There may be circumstances, however, where such a requirement would be unfair or otherwise contrary to the interests of justice. Accordingly, the Joint Parties recommend that the Commission determine on a case-by-case basis whether and how much excess procurement should be applied by a retail seller to the procurement content deficit underlying its waiver request.

3.4. Prior Deficits

The Joint Parties reserve comment on this topic.

3.5. Assembly Bill 2187

The Joint Parties reserve comment on this topic.

3.6. Penalties

3.6.1. Penalty Amount

1. **Should the prior concept of an "upfront" penalty (i.e., a penalty that is to be presumptively imposed) be retained? Why or why not?**

Yes. Having an "upfront"' penalty in a set amount provides certainty to retail sellers as to the consequences of not meeting the PQR or having a Category 1 resource procurement deficit. That certainty is needed for retail sellers to make rational business decisions concerning,

among other things, how much they should be willing to pay for RPS products. That being said, the Commission should have the discretion to impose a lower penalty if the circumstances warrant. In addition, the Joint Parties recommend that the Commission consider establishing an "Alternate Compliance Mechanism" that would enable retail sellers to avoid "penalties" altogether by making "up front" payments under the ACM to cover some or all of any PQR or Category 1 deficit it has been unable to fill.

2. **Should the penalty amount for failure to meet RPS procurement requirements be kept at $50/MWh for each MWh (i.e., REC) that the retail seller is below its PQR for the compliance period? Please provide rationales that address both legal and practical implementation perspectives.**

The existing $50/MW penalty amount is appropriate, as it is sufficiently high to ensure that retail sellers use commercially reasonable efforts to procure Category 1 products and meet their PQRs, without being so high as to be unreasonably punitive. That being said, the Joint Parties would support a lower penalty amount being adopted if it appears that market prices have declined to such an extent that the $50/MWh amount is no longer reasonable. In addition, the Joint Parties would support the Commission adopting variable penalty amounts for different types of deficits—for example, the penalty amount should be much lower than $50/MWh where the retail seller has met its Category 1 minimum procurement requirement but nonetheless has a PQR deficit after the close of the compliance period.

3. **If the Commission should set a different dollars-per-REC penalty amount, please provide a sample calculation and comparison of the proposed new amount to the $50/REC figure.**

See comments in response to Questions 1 and 2 above.

4. **Should the dollars-per-REC penalty vary for different compliance periods?**

   - **Should the dollars-per-REC penalty vary according to the length of the compliance period?**

   - **Should the dollars-per-REC penalty be set for the first compliance period, with an escalation factor in subsequent compliance periods? If yes, please provide a sample calculation.**

The Joint Parties reserve comments on these issues.

5. **Should the dollars-per-REC penalty amount vary based on a retail seller's total retail sales? Why or why not?**

The Joint Parties reserve comment on this issue.

6. **If the Commission should set a dollars-per-REC penalty amount that varies based on a retail seller's total retail sales, how should the variable penalty amount be determined? Please provide sample calculations that fully illustrate the proposal.**

The Joint Parties reserve comments on this issue.

7. **Should the Commission retain the requirement that a retail seller include a calculation of the presumptive penalty with its compliance report for a compliance period, if the compliance report shows a shortfall? Why or why not?**

The Joint Parties do not oppose this "requirement" being continued, as it provides retail sellers with an easily understood calculation of the penalties they potentially face if they are not able to cover their entire PQRs or procurement content requirements. However, the calculated penalty amounts should be confidential, as they could be used in combination with other information set forth in the compliance reports to determine a retail seller's retail sales and RPS "net short" position.

8. **If the Commission should not retain this requirement, at what point in the compliance or enforcement process should a retail seller's potential penalty liability be calculated?**

See comments in response to Question 7 above.

3.6.2. Penalty Cap

1. **Should the Commission adjust the same penalty cap to conform to the multi-year compliance periods, as implemented in D.11-12-020? That is, should the Commission institute a penalty cap of $75 million for the 2011-2013 compliance period and the 2014-2016 compliance period; a penalty cap of $100 million for the 2017-2020 compliance period; and a penalty cap of $25 million for each annual compliance period in 2021 and later year?**

The Joint Parties reserve comment in this issue.

2. **Should the amount of the penalty cap be changed? Why or why not? Please provide rationales that address both legal and practical implementation perspectives.**

The Joint parties reserve comment on whether the penalty cap (as stated in dollars) should be changed, subject to the comments in response to Question 6 below.

3. **If the Commission should set a different penalty cap, please provide a sample calculation and comparison of the proposed new cap to the $25 million/year figure.**

See comments in response to Question 2 above and the questions below.

4. **Should the penalty cap vary for different compliance periods, beyond the arithmetic difference created by the differing lengths of the compliance periods? Please provide rationales that address both legal and practical implementation perspectives.**

The Joint Parties reserve comment on this issue.

5. **If the Commission should vary the penalty cap for different compliance periods, how should the cap vary? Please provide a sample calculation.**

The Joint Parties reserve comment on this issue.

6. **Should the penalty cap vary based on the total retail sales of each retail seller? Why or why not?**

Yes. In order for the penalty cap to be equitable to all retail sellers in terms of its effect of limiting the potential penalties that each individual retail seller is subject to, the penalty cap should be reformulated as a percentage of retail sellers. That is, assuming the penalty cap for the IOUs is $25 million, the penalty cap for other classes of retail sellers should be stated as a

percentage that is the product of the combined average of the three IOUs' retail sales divided by 25 million. That percentage could then be applied to individual non-IOU retail sellers to determine the penalty cap applicable of each such entity.

7. **If the Commission should set a penalty cap that varies based on a retail seller's total retail sales, how should the penalty cap amount be determined? Please provide rationales that address both legal and practical implementation perspectives. Please include a detailed methodology and sample calculation.**

See comments in response to Questions 6 above.

3.6.3. Penalties for Shortfalls in Procurement Quantity Requirement and Portfolio Balance Requirement

1. **Should the dollars-per-REC penalty amount be the same for failure to comply with either the PQR or the PBR? Why or why not?**

While as a general matter the penalty amounts should be the same, there may be circumstances where that would not be reasonable. (For additional discussion of this issue, please see the Joint Parties comments in Section 3.6.1 above.) However, penalties should only be applied to a MWh deficit once—that is, a retail seller with a PQR deficit resulting from a Category 1 (or other procurement category) deficit should only be assessed penalties based on the amount of the PQR deficit. In no case should a retail seller be assessed "double" penalties—that is, a retail seller should not be required to pay a penalty for a PQR shortfall and also be required to pay penalties on the underlying procurement category deficits.

2. **If the Commission should set different penalty amounts for the two types of shortfalls, how should the penalty amount be determined? Please provide a sample calculation. Please provide rationales that address both legal and practical implementation perspectives.**

See comments in response to Question 1 above.

3. **Should the penalty cap for failure to comply with the PQR be the same as the penalty cap for failure to comply with the PBR? Why or why not?**

The Joint Parties reserve comment on this issue.

4. **If the Commission should set different penalty caps for the two types of shortfalls, how should the penalty caps be determined? Please provide a sample calculation. Please provide rationales that address both legal and practical implementation perspectives.**

The Joint Parties reserve comment on this issue.

5. **If a retail seller both fails to attain its PQR and does not comply with the PBR in the same compliance period, should the Commission assess a penalty for each shortfall? For PQR but not PBR? Please provide rationales that address both legal and practical implementation perspectives.**

See comments in response to Question 1 above.

3.7. Alternative Compliance Mechanisms

1. **Does the Commission have the authority to use any alternative compliance mechanism as part of its administration of the RPS program? Please specify the legal sources on which your response relies.**

Yes. Nothing in RPS statute precludes an ACM being established, and doing so would be a reasonable and rationale way to enable retail sellers that for whatever reason are unable to meet their PQRs of procurement content requirements for a given compliance period to satisfy their RPS obligations without having to go through the enforcement process. This alternative to the enforcement-and-penalties regime is attractive to ESPs that also have operations in other states, as many states require entities that operate in the state to report any fines, penalties, and citations they have been assessed in other jurisdictions.

2. **If the Commission does have the authority to use an alternative compliance mechanism, should the Commission do so? Why or why not? Please provide rationales that address both legal and practical implementation perspectives.**

See comments in response to Question 1 above.

3. **If the Commission should implement an alternative compliance mechanism for California's RPS program, what form should such a mechanism have? Please be specific, and include sample calculations if relevant. Please also discuss whether IOUs could or should recover any alternative compliance costs from ratepayers.**

Rather than any of the ACM structures described in the ALJ Ruling, the Joint Parties support the following approach: Obligated retail sellers that determine before the end of a compliance period that they will not be able to meet the PQR and/or procurement content requirement for that period will be allowed to make an "alternative compliance payment" at a flat rate that is equivalent to the non-compliance penalty amount set by the Commission, and will not be required to request a waiver or pay any non-compliance penalties for that period.

3.8. RPS Citation Program

The Joint Parties do not recommend any changes to the RPS citation program.

3.9. Compliance Reporting

The Joint Parties do not recommend any changes to the RPS compliance reporting framework and reporting templates beyond those already discussed in the previously held informal workshops on this topic.

III. CONCLUSION

For the reasons above, the Joint Parties urge the Commission to adopt the recommended rules and procedures described in these comments.

Respectfully submitted,

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October 28, 2013

VERIFICATION

I, Gregory S. G. Klatt, attorney for the Joint Parties, am authorized to make this Verification on their behalf. I declare under penalty of perjury that the statements in the foregoing Opening Comments of the Joint Parties on Compliance and Enforcement Issues are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

Executed on October 28, 2013, at Woodland Hills, California.

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