

**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)

**REPLY COMMENTS OF
THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
ON THE ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON
COMPLIANCE AND ENFORCEMENT ISSUES IN THE
RENEWABLES PORTFOLIO STANDARD PROGRAM**

The Southern California Public Power Authority (SCPPA) respectfully submits these reply comments in response to issues raised by interested stakeholders on October 25, 2013 related to compliance with the California renewables portfolio standards (RPS) program offered by Administrative Law Judge Anne E. Simon on September 27, 2013.

I. INTRODUCTION

Although SCPPA members are not subject to the California Public Utilities Commission's (CPUC) jurisdiction, SCPPA members have a continued interest and potential stake in CPUC's review and possible revision of the penalties for noncompliance with the State's RPS requirements. SCPPA's interest in this proceeding continues to be motivated by the fact that policies established by the CPUC may be used by, or set the tone for, the California Energy Commission (CEC) and California Air Resources Board (CARB) in their efforts towards establishing a comparable RPS penalty regime for the Publicly Owned Utilities (POUs).

SCPPA supports reply comments submitted by the California Municipal Utilities Association (CMUA) filed in this docket. However, in addition to its statement of support for the CMUA filing, SCPPA respectfully submits additional comments below.

II. SCPPA RESPONSES TO PARTY COMMENTS ON QUESTIONS RAISED IN THE ALJ RULING

A. Any Penalty Action Must Be Based Proportionally on Retail Sales

SCPPA agrees with initial comments filed by PacifiCorp, Bear Valley Electric Service, the City and County of San Francisco, and the “Joint Parties”¹ advocating that the CPUC penalty regime reflect a fair and proportional cost of compliance for each load-serving entity. The penalty cap should and must reflect the size of the load-serving entity as measured by retail sales to ensure that no single set of the State’s ratepayers are disproportionately impacted.

SCPPA strongly disagrees with Pacific Gas and Electric Company’s initial comment suggesting that the same penalty amount should apply to all load-serving entities “to ensure a level playing field among all entities.”² Because of the enormous differences in retail sales between the State’s largest Investor-Owned Utilities and the smallest electric service providers and POUs, assessing the same penalty across five million (5,000,000) customers versus fifty thousand (50,000) customers would be detrimental to the goals of the State’s RPS program. Applying the same penalty amount to all load-serving entities, regardless of size, would be unjust and would be inconsistent with the tradition of legislative and statutory equitability. The State’s RPS legislation did not mandate a uniform procurement target for the State’s load-serving

¹ “Joint Parties” refers to 3 Phases Renewables, ConEdison Solutions, EDF Industrial Power Services, and Tiger Natural Gas.

² PG&E Comments at Pages 33 and 35.

entities; any penalty amount and penalty cap should follow with proportional limits as well.

B. Support for CMUA’s “Change in Law” Recommendation

SCPPA continues to strongly reiterate comments filed jointly with the California Municipal Utilities Association that, if the CPUC determines that it does have the discretion to waive enforcement for conditions beyond those listed in section 399.15(b)(5), that where an act of the State legislature changes existing law should also be included as a condition meriting an enforcement waiver. Any subsequent action by the CPUC or the CEC that would retroactively cause a renewable resource to lose eligibility or be “downgraded” under the RPS program, thereby resulting in non-compliance, should automatically justify an enforcement waiver.

C. Encourage Flexibility and Case-by-Case Examination In a Multi-Step RPS Enforcement Process

SCPPA agrees with initial comments filed by Southern California Edison and San Diego Gas & Electric Company urging the CPUC to consider additional conditions outside of those listed in Section 399.15(b)(5) during any compliance and enforcement proceeding or to pursue alternative enforcement actions before imposing penalties.³ Indeed, it is particularly important that a penalty regime include sufficient flexibility to both ensure that a load-serving entity be provided the opportunity to demonstrate a good faith effort to comply with the RPS and recognizes the direct role that other state regulatory agencies have in a load-serving entities’ compliance. As emphasized in Subsection B of these comments, change in law should warrant consideration as an additional condition that should justify an enforcement waiver.

³ SCE Comments at Page 12; SDG&E Comments at Pages 6 and 15.

Explicitly outlining that multiple mechanisms exist for a load-serving entity to reach compliance or mitigate any non-compliance findings should be a fundamental component guiding implementation of the State's increasingly rigorous RPS program. Fundamentally, the goal of the State Agencies in the enforcement process should be to *encourage* compliance with the RPS, not excessively punish load-serving entities for non-compliance caused by conditions that were beyond their control.

Finally, SCPPA further agrees that any financial penalties should be limited to situations where the CPUC determines that a load-serving entity acted unreasonably and/or with conscious or intentional failure to perform.⁴

III. CONCLUSION

SCPPA appreciates the opportunity to provide these reply comments to the CPUC in this proceeding and urges the Commission to consider the unique circumstances of each California load-serving entity as it meets the State's RPS goals.

Dated: November 12, 2013

Respectfully submitted,

/s/ Tanya DeRivi

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⁴ Southern California Edison Comments at Pages 15 and 16.

VERIFICATION

I am an officer of the Southern California Public Power Authority, and am authorized to make this verification on its behalf. The statements in the foregoing document 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.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 12, 2013 at Sacramento, California.

/s/ Tanya DeRivi
Director of Regulatory Affairs
Southern California Public Power Authority