

**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 BEAR VALLEY ELECTRIC SERVICE (U 913-E),  
A DIVISION OF GOLDEN STATE WATER COMPANY,  
ON COMPLIANCE AND ENFORCEMENT ISSUES IN THE  
RENEWABLES PORTFOLIO STANDARD PROGRAM**

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November 12, 2013

*Attorneys for Bear Valley Electric Service*

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Pursuant to the September 27, 2013 *Administrative Law Judge’s Ruling Requesting Comments on Compliance and Enforcement Issues in the Renewables Portfolio Standard Program* (“ALJ Ruling”) and the October 18, 2013 *Administrative Law Judge’s Ruling Granting Request for Extension of Time to File Comments and Reply Comments on Administrative Law Judge’s Ruling Seeking Comments on Compliance and Enforcement Issues*, Bear Valley Electric Service (“BVES”), a division of Golden State Water Company, provides the following reply comments in response to certain opening comments and recommendations on compliance and enforcement elements of the renewables portfolio standard (“RPS”) program as administered by the California Public Utilities Commission (“Commission”). BVES’ reply comments focus on three primary recommendations: (1) RPS compliance reports should be served, not filed; (2) the imposition of penalties should be evaluated on a case-by-case basis; and (3) penalty caps should be reasonably tailored to the size of the retail seller.

**I. Submission of RPS Compliance Reports – Formal Filing Requirements for RPS Compliance Reports are Unnecessary**

As described by an overwhelming majority of commenters on the ALJ Ruling, RPS compliance reports should not be formally filed. Pacific Gas and Electric Company (“PG&E”),

Southern California Edison Company (“SCE”), San Diego Gas & Electric Company (“SDG&E”), PacifiCorp, the Alliance for Retail Energy Markets (“AReM”), Shell Energy North America (US), L.P. (“Shell”), Noble Americas Energy Solutions LLC (“Noble”), the Marin Energy Authority (“MEA”), and 3 Phases Renewables, ConEdison Solutions, EDF Industrial Power Services, and Tiger Natural Gas (collectively the “Joint Parties”), all recommend that RPS compliance reports should continue to be submitted to Energy Division and served upon the service list, without a formal filing requirement.<sup>1</sup> This process has worked well in the past and there have been no valid justifications to alter the submission process at this time. Additionally, formal filing requirements could prove problematic based on compliance report template size issues, as well as the need to correct errors in any templates. Therefore, as recommended by most parties in opening comments, the process to submit RPS compliance reports should not be altered, and reports should continue to be submitted to Energy Division and served upon the service list.

## **II. Assessment of Penalties – Penalties Should be Evaluated on a Case-by-Case Basis**

As described more fully in BVES’ opening comments, in assessing any potential penalties for a retail seller’s failure to meet its Procurement Quantity Requirement (“PQR”) or its Portfolio Balance Requirement (“PBR”), the Commission should evaluate the circumstances associated with a procurement shortfall and consider each situation on a case-by-case basis. Different factors may have caused a procurement shortfall, many beyond the control of the retail seller. Accordingly, the Commission should examine all relevant facts and the totality of the circumstances surrounding a procurement shortfall prior to determining a penalty amount. In

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<sup>1</sup> See Comments of PG&E, pp. 5-6; Comments of SCE, p. 19; Comments of SDG&E, p. 2; Comments of PacifiCorp, pp. 3-4; Comments of AReM, p. 10; Comments of Shell, pp. 1-2; Comments of Noble, pp. 3-4; Comments of MEA, p. 3; and Comments of the Joint Parties, pp. 2-3.

opening comments, the Los Angeles Department of Water and Power (“LADWP”) recommended that one possible approach for assessing penalties would be to consider, “on a case-by-case basis, factors influencing non-performance with the state’s RPS Program.”<sup>2</sup> LADWP’s recommendation “may be a better approach to determine the most productive way to achieve compliance.”<sup>3</sup> BVES agrees wholeheartedly and encourages the Commission to evaluate any penalties on a case-by-case basis.

Additionally, as noted by the California Municipal Utilities Association and the Southern California Public Power Authority (“CMUA/SCPPA”), the “Commission should completely change the calculation of the RPS penalty amount” to capture the fact that the “market for renewable power has changed dramatically since the penalty was originally adopted in 2003.”<sup>4</sup> Any penalty amount should “consider the retail seller’s prior actions and the circumstances surrounding the non-compliance when determining the penalty amount,” taking into account “(1) the number and severity of prior violations; (2) extenuating circumstances; (3) and reasonable efforts to comply, such as the conditions specified in section 399.15(b)(5)(B)(i)-(iv).”<sup>5</sup> Additionally, based on the “significant economies of scale involved in the development and procurement of renewable generation,” any penalty amount must consider the unique challenges that small retail sellers face, including (1) greater difficulty in negotiating long-term contracts; (2) greater difficulty in constructing more cost-effective, utility scale projects; and (3) greater administrative challenges.<sup>6</sup> BVES strongly agrees with CMUA/SCPPA and urges the

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<sup>2</sup> Comments of LADWP, p. 8.

<sup>3</sup> *Id.* at 13.

<sup>4</sup> Comments of CMUA/SCPPA, p. 8.

<sup>5</sup> *Id.* at 10.

<sup>6</sup> *Id.*

Commission to follow these recommendations in adopting any compliance and enforcement elements of the RPS program.

### **III. Penalty Caps – Any Adopted Penalty Cap Must be Reasonably Tailored to the Size of the Retail Seller**

The Commission must reject the recommendations of PG&E and SCE that “the same penalty cap must be applicable to all retail sellers.”<sup>7</sup> The basis for PG&E’s and SCE’s recommendation is unfounded. SCE states that penalty caps should not vary by retail seller because “California law mandates that all retail sellers be subject to the same requirements, terms, and conditions with respect to the RPS program.”<sup>8</sup> However, both PG&E and SCE fail to account for the fact that a one-size-fits-all penalty cap amount will function differently for different sized retail sellers. For example, as described by AReM in its opening comments, by using a one-size-fits-all penalty cap amount, “large retail sellers will have penalties capped at a much earlier stage for a much smaller procurement deficiency. This result is inequitable and disproportionately penalizes smaller retail sellers by forcing them to pay a significantly higher penalty in comparison to their size.”<sup>9</sup> Accordingly, to ensure that the “same requirements, terms, and conditions” apply equally to all retail sellers, the Commission must ensure that any penalty cap is proportional to the size of the retail seller.

BVES’ position is supported by an overwhelming majority of commenters, including PacifiCorp, AReM, Shell, MEA, CMUA/SCPPA, LADWP, the Joint Parties, and the City and

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<sup>7</sup> Comments of PG&E, p. 24. *See also* Comments of SCE, p. 16.

<sup>8</sup> Comments of SCE, p. 16.

<sup>9</sup> Comments of AReM, p. 28.

County of San Francisco (“San Francisco”).<sup>10</sup> All of these parties recommend that any penalty cap should be proportionally based on the size of the retail seller. Based on the multitude of arguments in support of a proportional penalty cap, the Commission must ensure that any adopted penalty cap provides a realistic limitation on penalties in proportion to the size of the retail seller.

#### **IV. Conclusion**

BVES appreciates this opportunity to provide these reply comments. BVES urges the Commission to adopt the following requirements: (1) RPS compliance reports should be served, not filed; (2) the imposition of penalties should be evaluated on a case-by-case basis; and (3) penalty caps should be reasonably tailored to the size of the retail seller.

Dated: November 12, 2013

Respectfully submitted,

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/s/  
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<sup>10</sup> See Comments of BVES, pp. 10-11; Comments of PacifiCorp, pp. 12-13; Comments of AReM, pp. 28-29; Comments of Shell, p. 12; Comments of MEA, p. 6; Comments of CMUA/SCPPA, pp. 11-12; Comments of LADWP, p. 15; Comments of the Joint Parties, pp. 15-16; and Comments of San Francisco, p. 2.

## VERIFICATION

I am the attorney for Bear Valley Electric Service (“BVES”), a division of Golden State Water Company, and am authorized to make this verification on its behalf. BVES is absent from the County of Sacramento, California, where I have my office, and I make this verification for that reason. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

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

Executed on November 12, 2013 at Sacramento, California.

/s/

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