

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4195

November 6, 2008

RESOLUTION

RESOLUTION E-4195. Approval of a modification to the current citation program enforcing compliance with system and local Resource Adequacy filing requirements by Load-Serving Entities.

SUMMARY

Commission Resolution E-4017¹ established a citation program to enforce the Commission's Resource Adequacy program for specific violations and in specific amounts and delegated to Energy Division the authority to issue citations. This Resolution supplements E-4017 and replaces it in its entirety; this Resolution transfers authority to draft and issue citations from Energy Division to Commission Staff as a whole, broadens the scope of the Resolution to encompass all Load Serving Entities (LSEs) that are potentially subject to Resource Adequacy obligations, and adds a Specified Violation for failure to meet Resource Adequacy obligations with a small procurement deficiency.

BACKGROUND

Public Utilities Code Section 380 requires the Commission to establish and enforce a Resource Adequacy program.

¹ Adopted by the Commission October 5, 2006, Specified Violations and Scheduled Penalties are listed in Appendix A to that resolution.

The Commission established a Resource Adequacy program in Decision (D.) 05-10-042 and modified it in subsequent decisions. D.04-10-035, D.05-10-42 and D.06-06-064 require the submission of certain information and compliance filings by LSEs within the service territories of California's three largest Investor-Owned Utilities (IOUs): Historic Load Data; Preliminary Load Forecasts; Preliminary Local Resource Adequacy Requirement Filings; Year-Ahead System Resource Adequacy Compliance Filings; Year-Ahead Local Resource Adequacy Compliance Filings; and Month-Ahead System Resource Adequacy Compliance Filings.

Resolution E-4017 established a citation program to fine LSEs for failure to make complete and timely filings. The citation program is administered by the Energy Division.

The Energy Division issues approximately 6 citations a year under the Resource Adequacy program.

DISCUSSION

This Resolution modifies the previously approved citation program in three important ways. It transfers authority to administer the citation program to Commission Staff in general instead of restricting authority to Energy Division only. It also adopts a new Specified Violation related to small procurement deficiencies.

Transfer of Authority to Commission Staff:

This Resolution transfers authority for drafting and issuing citations from Energy Division to Commission Staff in general. Transfer of authority to Commission Staff in general will enable the Executive Director to determine the appropriate division to implement the various parts of the Resource Adequacy citation program. The intent of the change is to allow greater efficiency by permitting the executive director to shift work duties between divisions as appropriate. This will allow the specialization of duties and streamline reporting.

Making Citation Program Apply to All LSEs in the Resource Adequacy Program:

E-4017 established the Resource Adequacy citation program and made it applicable to LSEs that are within the service territories of the three large IOUs. Rulemaking 05-12-013 is developing Resource Adequacy program rules for small and multi jurisdictional LSEs (SMJLSEs), some of which are not within the service territories of the three IOUs. For example, PacifiCorp and Sierra Pacific are not within the service territories of the three major IOUs, as they operate their own service territories. If rules for SMJLSEs are established, LSEs not currently subject to the filing requirements of the current RA Program may be required to make filings on certain dates and demonstrating certain levels of procurement. Although that mechanism is not fully defined as of now, this resolution seeks to create an administratively efficient method of ensuring compliance by the SMJLSEs. This Resolution extends the citation program to Resource Adequacy filings made by all Commission jurisdictional LSEs and enables the Commission to apply uniform penalties for non-compliance.

Specified Violation for Small Procurement Deficiencies:

This Resolution specifically recognizes a small procurement deficiency as a Specified Violation and authorizes Commission Staff to impose a penalty on LSEs who fail by a small amount to procure sufficient resources to meet their Resource Adequacy requirement. Currently, the administrative procedure for pursuing an LSE's failure to procure required resources is to open an Order Instituting Investigation and complete a formal proceeding. This process is optimal when the noncompliance is large, but is burdensome when the amount of the under-procurement is relatively small. A small procurement deficiency is defined as procuring resources that are less than the LSE's Resource Adequacy requirement by no more than one percent, and not exceeding 5 MW. Deficiencies of more than one percent but less than or equal to one megawatt are also considered small procurement deficiencies for citation purposes under this Resolution. Establishing this Specified Violation will create an enforcement mechanism that is more on the scale of the size and severity of a small procurement deficiency. The addition of this Specified Violation does not remove an

LSE's responsibility to promptly procure to eliminate a small procurement deficiency.

Nothing in this Resolution diminishes, alters, or reduces the Commission's existing authority to open an investigation and take formal enforcement action for a LSEs failure to procure all or part of its Resource Adequacy requirement or otherwise fail to comply with the Resource Adequacy program.

The Resource Adequacy enforcement program as adopted by Resolution E-4017 and modified by this Resolution is contained as Appendix A to this Resolution.

COMMENTS

The Draft Resolution was mailed to the parties in interest on October 6, 2008, in accordance with Public Utilities Code section 311(g) (1) and Rule 14.2 of the Rules of Practice and Procedure.

Four parties filed comments – AReM, PG&E, Mountain Utilities, and Golden State Water. Additionally, reply comments were received from SCE, Sierra Pacific Power, and Pacific Power. In general, PG&E and AReM support the resolution with minor suggestions related to the definition of Small Procurement Deficiency and penalty amounts, while Mountain Utilities and Golden State Water comment on larger issues that are more foundational. All comments have been read and reviewed, and to the extent that they were accepted this resolution has been amended, and to the extent that they were seen as outside the scope of the changes to the citation program that this resolution introduced, they have been denied. Key changes are included in section 1.1.1 of Appendix A and the third discussion paragraph above related to SMJLSEs. The reply comments further discuss these same issues, so they are not discussed separately.

FINDINGS

1. D.04-10-035, D.05-10-42 and D.06-06-064 require the submission of certain information and compliance filings by LSEs subject to the Commission's jurisdiction: Historic Load Data; Preliminary Load Forecasts; Preliminary Local Resource Adequacy Requirement Filings; Year-Ahead System Resource Adequacy Compliance Filings; Year-Ahead Local Resource Adequacy Compliance Filings; and Month-Ahead System Resource Adequacy Compliance Filings.
2. Resolution E-4017 established a citation program to ensure the efficient implementation of the Resource Adequacy program.
3. Delegation of authority to Commission Staff to issue citations and levy Scheduled Penalties for Specified Violations will allow prompt and efficient action by Staff.
4. Prompt action by Staff is necessary to protect consumers and fulfill the objectives of the Commission's Resource Adequacy program and Public Utilities Code Section 380.
5. Expanding the resource adequacy citation program to all Commission jurisdictional LSEs is reasonable and will promote effective program implementation.
6. Creating a Specified Violation for failure to procure sufficient resources, by a small amount, will help deter under procurement, minimize enforcement costs, and promote effective program implementation.
7. The revisions to the procedures for the existing citation program fulfill the objectives of Public Utilities Code Section 380, and ensure due process, fairness and efficiency in the application of the citation program.

8. The citation program and the Scheduled Penalties set forth in Appendix A are reasonable, will achieve the objectives of the Commission's Resource Adequacy program and Public Utilities Code Section 380, and will help deter future violations.

THEREFORE, IT IS ORDERED THAT

1. Commission Resolution E-4017 is superseded and replaced in its entirety by the enactment of this Resolution.
2. The citation program and the Revised Scheduled Penalties for the Specified Violations contained in Appendix A, are hereby adopted.
3. Authority is delegated to Commission Staff to issue citations and levy Scheduled Penalties for the Specified Violations set forth in Appendix A.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on November 6, 2008. The following Commissioners approved it:

/s/ Paul Clanon

Paul Clanon
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

APPENDIX A

Resource Adequacy Citation Program

The Resource Adequacy program currently requires several compliance filings:

- “Historic Load Data”: actual load data from the prior year submitted to the California Energy Commission.
- “Preliminary Load Forecast”: an annual, year-ahead hourly load forecast for all twelve months of the following year submitted to the California Energy Commission.
- “Preliminary Local Resource Adequacy Compliance Filing”: a compliance filing with appropriate Commission Staff using an approved template and under approved rules that demonstrates the LSE’s capacity contracts for all months of the upcoming compliance year.
- “Year-Ahead System Resource Adequacy Compliance Filing”: an annual compliance filing with the appropriate Commission Staff using an approved template that demonstrates qualifying capacity contracts in sufficient megawatt quantities to satisfy the 90 percent forward commitment obligation for loads plus reserve requirements for each of the five summer months, May – September, of the following year.
- “Year-Ahead Local Resource Adequacy Compliance Filing”: an annual compliance filing with the appropriate Commission Staff using an approved template that demonstrates qualifying capacity contracts in sufficient megawatt quantities to satisfy 100 percent of the local procurement obligation for each month of the next compliance year (e.g. currently January through December).
- “Month-Ahead System Resource Adequacy Compliance Filings”:
(1) a monthly compliance filing with appropriate Commission Staff

using an approved template which demonstrates: (a) acquisition of 100 percent of the qualifying system capacity obligation (adjusted forecast plus reserve margin) for a “compliance month” from the qualifying capacity providers maintained by the California Independent System Operator and the amount of capacity from each provider; and (b) the sale of any qualifying capacity previously identified in a Resource Adequacy compliance filing for Year Ahead Local Resource Adequacy requirements, and that the capacity remains fully available to the California Independent System Operator; and (2) a monthly load forecast submitted to the California Energy Commission demonstrating adjustments to the Preliminary Load Forecast for positive and negative load growth due to load migration.

This citation program establishes specified fines for failure to make required filings, filing late, or failure to file in the proper manner. The penalty for failure to file the Year-Ahead Local Resource Adequacy filing, which was specifically determined in D.06-06-064, will not be the subject of this citation program, but will be enforced through formal Commission proceedings.²

The issuance of a citation for a specified violation is not mandatory. In enforcing compliance with Resource Adequacy filing requirements, or in response to any Specified Violation, the Commission may initiate any authorized formal proceeding or pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity. Finally, the Commission’s enforcement of this Resolution by informal proceedings, formal proceedings, or otherwise, does not bar or affect the remedies otherwise available to other persons or government agencies.

CITATION PROGRAM

1.0 Specified Violations and Scheduled Penalties

² D.06-06-064, mimeo at pp. 69-70 and p. 87, Conclusion of Law 26.

1.1 “Specified Violation” means the failure, absent an approved extension, to submit: (a) any load data, load forecast or other Resource Adequacy compliance filing in the time and manner required; and (b) other supporting data required by Staff that is reasonably related to the implementation of the Commission’s Resource Adequacy program. Submitting an RA filing with a small procurement deficiency is also a Specified Violation.

1.1.1 “Small Procurement Deficiency” means a deficiency in capacity procurement by an LSE where the deficiency is not larger than 1 percent of the total Resource Adequacy Requirement of the LSE, and less than 5 MWs. If a deficiency is larger than 1 percent of the total Resource Adequacy obligation of the LSE and less than or equal to 1 MW, it is also considered a Small Procurement Deficiency for citation purposes under this Resolution. To qualify as a Small Procurement Deficiency an LSE notified of a Small Procurement Deficiency must procure to fill the deficiency within the time specified by Energy Division in the notification. Failure to promptly procure sufficient capacity to resolve a Procurement Deficiency may subject the LSE to alternate penalties.

1.3 Modification of Scheduled Penalties. Scheduled Penalties may be modified by Resolution.

2.0 Procedures for Citation Program

2.1 Citations for Specified Violations. After appropriate informal investigation and verification that a Specified Violation defined in this Resolution has occurred, Commission Staff is authorized to issue a citation. The Specified Violations and the corresponding Scheduled Penalty that may be levied are described in this Resolution.

2.2 Service of Citations. Citations shall be sent by Commission Staff by first class mail to the Respondent at the address of the agent for service of process.

2.3 Content of Citations. Citations shall state the alleged violation, the evidence supporting the alleged violation, and the proposed

Scheduled Penalty. The citation may summarize the evidence and Commission Staff shall make the evidence available for timely inspection upon request by the Respondent. Citations also shall include an explanation of how to file an appeal of the citation, including the explanation of a right to have a hearing, to have a representative present at the hearing, and to request a transcript.

2.4 Response to Citation. A Respondent may either: (1) accept the citation and the Scheduled Penalty; or (2) appeal the citation.

2.5 Filing with Commission Staff. Unless otherwise specified, “notify Commission Staff,” “filing,” or “file” means to send a written communication by the U.S. Mail or an express mail service to the address specified in the order or citation that requires the filing or notification. These written communications are not filed with the Commission’s Docket Office. In addition to or instead of communications by mail service, Commission Staff may allow electronic submissions.

2.6 Acceptance of Scheduled Penalty. In the event the proposed Scheduled Penalty is accepted, the Respondent shall notify Commission Staff in writing and shall pay the penalty in full as set forth in subsection 2.8, below within thirty (30) days of the date of the citation.

2.7 Appeal of Citation. In lieu of accepting the Scheduled Penalty, a Respondent may appeal the citation and request a hearing. In the event of an appeal, any remedy available may be imposed, and the remedy shall not be mandated by or limited to the Scheduled Penalty.

2.7.1. Notice of Appeal. To appeal a citation, the Respondent must file a written Notice of Appeal. The Notice of Appeal must state the grounds for appeal and be filed with Commission Staff within thirty (30) days of the date of the citation.

2.7.2. Referral to Administrative Law Judge. Upon receipt of a timely Notice of Appeal, Commission Staff shall promptly provide a copy of the Notice of Appeal to the Chief Administrative Law Judge.

The Chief Administrative Law Judge shall promptly designate an Administrative Law Judge to hear the appeal.

2.7.3 Time of Hearing. No less than ten (10) days after the Notice of Appeal is filed, the assigned Administrative Law Judge shall set the matter for hearing promptly. The Administrative Law Judge, may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.

2.7.4 Location of Hearing. Appeals of citations shall be heard in the Commission's San Francisco courtroom on regularly scheduled days.

2.7.5 Transcripts. The Respondent may order a transcript of the hearing, and shall pay the cost of the transcript in accordance with the Commission's specified procedures.

2.7.6 Representation at Hearing. The Respondent may be represented at the hearing by an attorney or other representative, but any such representation shall be at the Respondent's expense.

2.7.7. Evidentiary Hearing. At an evidentiary hearing, Commission Staff bears the burden of proof and, accordingly, shall open and close. The Administrative Law Judge may, in his or her discretion to better ascertain the truth, alter the order of presentation. Formal rules of evidence do not necessarily apply, and all relevant and reliable evidence may be received at the discretion of the Administrative Law Judge.

2.7.8 Submission. Ordinarily, the matter shall be submitted at the close of the hearing. The Administrative Law Judge, upon a showing of good cause, may keep the record open for a reasonable period to permit a party to submit additional evidence or argument.

2.7.9 Decision. The Administrative Law Judge shall issue a draft Resolution resolving the appeal not later than thirty (30) days after the appeal is submitted in accordance with subsection 2.7.8,

and the draft Resolution shall be placed on the first available agenda, consistent with the Commission's applicable rules.

2.7.10 Communications. From the date that a citation is issued to and including the date when the final decision is issued, neither the Respondent nor Commission Staff, or any agent or other person on behalf of the Respondent or Commission Staff, may communicate regarding the appeal, orally or in writing, with a Commissioner, Commissioner's advisor, or Administrative Law Judge, except as expressly permitted under these procedures.

2.8 Payment of Scheduled Penalties. Payment of Scheduled Penalties shall be submitted to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check, payable to the Public Utilities Commission for the credit of the State General Fund.

2.9 Default. If the Respondent: (a) notifies Commission Staff of acceptance of a Scheduled Penalty and fails to pay the full amount of the Scheduled Penalty within thirty (30) days of the date of the written acceptance of the Scheduled Penalty; or (b) fails to notify Commission Staff of acceptance of a Scheduled Penalty or fails to file a written Notice of Appeal in the manner and time required, then the citation and penalty shall become final and the Respondent is in default. Upon default, any unpaid balance of a Scheduled Penalty shall accrue interest at the legal rate of interest for judgments, and Commission Staff and the Commission may take any action provided by law to recover unpaid penalties and ensure compliance with applicable statutes and Commission orders, decisions, rules, directions, demands or requirements.

2.10 Reporting. Commission Staff shall regularly report to the Commission summarizing actions taken pursuant to this Resolution. The report shall include a summary of the citations and penalties imposed, penalties paid, and the disposition of any appeals.

SPECIFIED VIOLATIONS AND SCHEDULED PENALTIES

Specified Violation	Scheduled Penalty
Failure to file Historic Load Data at the time or in the manner required.	\$1,000 per incident <i>plus</i> \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.
Failure to file a Preliminary Load Forecast at the time or in the manner required.	\$1,000 per incident <i>plus</i> \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.
Failure to file a Month-Ahead System Resource Adequacy Compliance Filing at the time or in the manner required.	\$1,000 per incident <i>plus</i> \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.
Failure to file a Preliminary Local Resource Adequacy Compliance Filing, or a Year-Ahead System Resource Adequacy Compliance Filing at the time or in the manner required.	\$1,000 per incident <i>plus</i> \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.
Failure to meet Resource Adequacy Requirement by filing with a small procurement deficiency	\$1,500 per incident
Failure to comply with a request for information from Energy Division that is reasonably related to implementation of the resource adequacy requirements in the time or in the manner required.	\$1,000 per incident <i>plus</i> \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.

(END OF APPENDIX A)