

## DOCKETED

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<b>Project Title:</b>	Complaint Against the Stockton Port District re: RPS Program Compliance
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<b>Description:</b>	Complaint for Noncompliance with the Renewables Portfolio Standard, January 8, 2018
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**COMPLAINT BY CALIFORNIA ENERGY COMMISSION EXECUTIVE DIRECTOR  
AGAINST THE STOCKTON PORT DISTRICT  
FOR NONCOMPLIANCE WITH THE RENEWABLES PORTFOLIO STANDARD**

**January 8, 2018**

## I. INTRODUCTION

This complaint is filed against the Stockton Port District, commonly referred to as the Port of Stockton (“Port”), pursuant to the California Code of Regulations title 20, article 5, including section 1240.<sup>1</sup> Section 1240 (b) provides that the Executive Director of the California Energy Commission (“Commission”) “may file a complaint against a local publicly owned electric utility for failure to meet a Renewables Portfolio Standard requirement, or any regulation, order, or decision adopted by the Commission pertaining to the Renewables Portfolio Standard, for local publicly owned electric utilities.”<sup>2</sup>

In this complaint the Executive Director, on behalf of Commission staff, alleges that the Port failed to satisfy its Renewables Portfolio Standard (RPS) procurement requirements for the 2011-2013 compliance period (“Compliance Period 1” or “CP1”) and was not otherwise excused from satisfying these requirements by the application of optional compliance measures in accordance with the Commission’s *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* (“RPS POU Regulations”) as are set forth in California Code of Regulations title 20, sections 1240 and 3200 – 3208.<sup>3</sup>

Section 1240 provides that a complaint against a local publicly owned electric utility (“POU”) for failure to meet the RPS, or any regulation, order, or decision adopted by the Commission pertaining to the RPS for POUs, shall include, but not be limited to, the following:

- A statement of the facts upon which the complaint is based.
- A statement indicating the statute, regulations, order, or decision upon which the complaint is based.
- The action the Commission is requested to take.
- The authority for the Commission to take such action.

This complaint sets forth the facts, the authority, and rationale for the Commission to determine 1) that the Port failed to satisfy its RPS procurement requirements and 2) that the Port was not excused by the application of optional compliance measures. However, before the Commission undertakes an adjudication to make this determination, Commission staff requests that the Commission first determine whether there were mitigating circumstances common to the Port and all other POUs that may have affected the Port’s ability to comply with its RPS procurement requirements for CP1. If so, it is requested that the Commission provide guidance on how to address such mitigating circumstances with respect to all POUs and whether it is appropriate in the Port’s case to waive its noncompliance for CP1 because of the mitigating circumstances.

In a separate motion filed concurrently with this complaint, staff is requesting that the Commission consider the complaint in a bifurcated, two-phased manner, such that the mitigating

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<sup>1</sup> Unless indicated otherwise, all regulatory references are to the California Energy Commission’s regulations in the California Code of Regulations, title 20 (20 CCR).

<sup>2</sup> 20 CCR, § 1240 (b)(1).

<sup>3</sup> The *RPS POU Regulations* were adopted by the Commission on June 12, 2013, approved by the Office of Administrative Law on August 28, 2013, and became effective October 1, 2013.

circumstances are considered separate and in advance of the merits of the alleged violations, and that a determination on these mitigating circumstances be rendered prior to a determination of the alleged violations. If the Commission determines that the mitigating circumstances excuse the Port's alleged violations, staff requests that the Commission end the adjudication at that point rather than complete the adjudication on the merits of the alleged violations.

## **II. STATEMENT OF FACTS AND ALLEGED VIOLATIONS**

### **A. Identification of Complainant**

Drew Bohan  
Executive Director  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814  
(916) 654-4996

### **B. Identification of Respondent POU**

Stockton Port District  
2201 West Washington Street,  
Stockton, CA 95203  
Mailing Address: P.O. Box 2089, Stockton, CA 95201

The Port is a local publicly owned electric utility as defined in Public Utilities Code section 224.3 and 20 CCR section 3201 (s), and is subject to the Commission's *RPS POU Regulations*.

### **C. Alleged Violation**

The Port failed to satisfy two separate RPS procurement requirements for CP1. The first of these requirements is referred to as the "procurement target" requirement and the second is referred to as the "portfolio balance" requirement.

#### **1. Procurement Target Requirement**

The procurement target requirement is set forth in section 3204 (a)(1) of the Commission's regulations, which provides in pertinent part as follows:

- (1) For the compliance period beginning January 1, 2011, and ending December 31, 2013, a POU shall demonstrate it has procured electricity products sufficient to meet or exceed an average of 20 percent of its retail sales over the three calendar years in the compliance period. [. . .]<sup>4</sup>

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<sup>4</sup> 20 CCR, § 3204 (a)(1).

Under section 3204 (a)(1), the Port was required to procure electricity products<sup>5</sup> from eligible renewable energy resources sufficient to meet or exceed an average of 20 percent of the Port's retail sales during CP1. Based on information reported to the Commission by the Port, the Port had annual retail sales of electricity for CP1 totaling 36,790 megawatt-hours (MWh). This equates to a 20 percent procurement target of 7,357 MWhs of electricity products from eligible renewable energy resources.

Based on Commission staff's verification of the Port's procurement claims of electricity products for CP1, staff determined that the Port procured only 607 MWhs of electricity products during the compliance period, of which only 152 MWhs could be claimed towards satisfying the 7,357 MWh procurement target requirement. Therefore, the Port had a procurement target deficit of 7,205 MWhs for CP1. The results of Commission staff's verification of the Port's procurement claims for CP1 are summarized in the Commission's final report for the Renewables Portfolio Standard Verification Results for the Port (*Renewables Portfolio Standard Verification Results: Port of Stockton, Compliance Period 1* Report), included as Exhibit A.<sup>6</sup>

## **2. Portfolio Balance Requirement**

The portfolio balance requirement is set forth in section 3204 (c), which provides in pertinent part as follows:

- (c) In meeting the RPS procurement targets as defined in section 3204 (a), each POU shall also be subject to the following portfolio balance requirements:
  - (1) For the compliance period beginning January 1, 2011, and ending December 31, 2013, not less than 50 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 1 specified in section 3203 (a). [¶. . . ¶]
  - (5) For the compliance period beginning January 1, 2011, and ending December 31, 2013, no more than 25 percent of electricity products that meet the criteria of section 3202 (a)(1) and credited toward the RPS procurement target shall meet the definition of Portfolio Content Category 3 specified in section 3203 (a). [¶. . . ¶]<sup>7</sup>

Under section 3204 (c), no less than 50 percent of the electricity products procured by the Port under contracts or ownership agreements executed on or after June 1, 2010, and credited

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<sup>5</sup> An "electricity product" is defined to mean either 1) electricity and the associated renewable energy credit generated by an eligible renewable energy resource or 2) an unbundled renewable energy credit. (20 CCR, § 3201 (j).)

<sup>6</sup> Refer to Exhibit A, *Renewables Portfolio Standard Verification Results: Port of Stockton, Compliance Period 1* Report, page 3. The *Renewables Portfolio Standard Verification Results: Port of Stockton, Compliance Period 1* Report was formally adopted by the Commission on January 25, 2017. Refer to Commission Resolution No. 17-0125-5 included as part of Exhibit A.

<sup>7</sup> 20 CCR, § 3204 (c).

towards the Port's RPS procurement target, were required to meet the criteria for Portfolio Content Category 1,<sup>8</sup> and no more than 25 percent of these electricity products were required to meet the criteria of Portfolio Content Category 3.<sup>9</sup>

Based on Commission staff's verification of the Port's procurement claims of electricity products for CP1, staff determined that the Port procured 607 MWhs of electricity products during CP1 from contracts or ownership agreements executed on or after June 1, 2010. This equates to a portfolio balance requirement of 50 percent of 607 MWhs, or 304 MWhs of electricity products from Portfolio Content Category 1. Commission staff determined that all 607 MWhs of electricity products procured by the Port were from Portfolio Content Category 3. Therefore, the Port had no procurement of electricity products from Portfolio Content Category 1, resulting in a deficit of 304 MWhs of electricity products from Portfolio Content Category 1. The results of Commission staff's verification of the Port's procurement claims for CP1 are summarized in the *Renewables Portfolio Standard Verification Results: Port of Stockton, Compliance Period 1* Report included as Exhibit A.

### **3. Other Regulatory Requirements**

While the Commission's regulations include other requirements, such as deadlines for filing specified reports, issuing public notices, and adopting plans and programs, Commission staff applied a rule of reason with respect to these requirements for CP1. If a POU made reasonable efforts to comply with the deadlines, the deadlines were deemed satisfied for CP1. Staff considered the efforts of the Port and all other POUs reasonable in this regard. Consequently, no other violations are being alleged against the Port.

## **III. DISCUSSION OF STAFF EVALUATION AND RPS REQUIREMENTS**

### **A. Staff Evaluation**

Commission staff evaluated the Port's RPS compliance based on the information the Port reported to the Commission pursuant to section 3206 (d) of the Commission's regulations. The information reported by the Port for CP1 is included as Exhibit B. This information includes the Port's claimed procurement of eligible renewable energy resources for the RPS. The information was evaluated by Commission staff in accordance with the process specified in the *Renewables Portfolio Standard Verification Methodology Report*<sup>10</sup> to 1) verify the RPS eligibility of renewable energy resources procured by the Port during CP1, 2) determine the Portfolio Content Category classification of the renewable energy resources procured by the Port, and 3) assist in determining the Port's compliance with the RPS.

As part of the evaluation, Commission staff prepared draft verification tables summarizing the results of staff's preliminary analysis of the Port's claimed procurement of

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<sup>8</sup> 20 CCR, § 3204 (c)(1).

<sup>9</sup> 20 CCR, § 3204 (c)(5).

<sup>10</sup> *Renewables Portfolio Standard Verification Methodology Report*, January 2017, pub. no. CEC-300-2017-001-SF, available on the Commission's website at [http://docketpublic.energy.ca.gov/PublicDocuments/11-RPS-01/TN215534\\_20170124T132200\\_Staff\\_Report\\_Renewables\\_Portfolio\\_Standard\\_Verification\\_Method.pdf](http://docketpublic.energy.ca.gov/PublicDocuments/11-RPS-01/TN215534_20170124T132200_Staff_Report_Renewables_Portfolio_Standard_Verification_Method.pdf)

eligible renewable energy resources for CP1. Staff also prepared a draft RPS Verification Results Report, which summarized the Port's procurement results for CP1. The draft verification tables and draft report are provided in Exhibit C and include the following:

- Claim Eligibility Spreadsheet, which contains information on the eligibility of the renewable energy source from each electrical generating facility that the Port claimed procurement, including identification of any procurement claims determined to be ineligible for the RPS.
- RPS Procurement Classification Spreadsheet, which provides both the reported and verified total Portfolio Content Category amounts for the entire compliance period, including any Portfolio Content Category reclassifications by facility.
- Compliance Period Procurement Requirements Spreadsheet, which provides a summary of the Port's draft verification results.
- Draft RPS Verification Results Report, which was a draft of the public report summarizing the Port's procurement results and compliance targets for CP1.

Over the course of the verification process, Commission staff shared the draft verification tables and the draft RPS Verification Results Report in a series of emails with the Port for its review and comment before the verification tables and report were finalized. (Refer to staff emails included as Exhibit D.) In response to staff emails requesting Port review, various representatives of the Port stated that the Port conditionally agreed with staff's verification results, but requested that a note be made in the verification results that the Port took additional actions during the compliance period. This notation was not made by Commission staff as it was outside the scope of the verification process. Refer to the Port's email responses included as Exhibit E.

The results in the draft verification tables and report were then used to prepare the final *Renewables Portfolio Standard Verification Results: Port of Stockton, Compliance Period 1* Report. As noted above in Section II.C., the final verification report for the Port was formally adopted by the Commission on January 25, 2017, as specified in Commission Resolution No. 17-0125-5.

## **B. Procurement Target Requirement**

As discussed in Section II.C.1, Commission staff determined that the Port had annual retail sales of electricity for CP1 totaling 36,790 MWhs, which equates to a 20 percent RPS procurement target of 7,357 MWhs of electricity products from eligible renewable energy resources. Based on staff's verification of the Port's procurement claims of electricity products for CP1, staff determined that the Port procured only 607 MWhs of electricity products during the compliance period, of which only 152 MWhs could be claimed towards satisfying the 7,357 MWh procurement target requirement. Therefore, the Port had a procurement target deficit of 7,205 MWhs for CP1.

### C. Portfolio Balance Requirement

As discussed in Section II.C.2, Commission staff determined that the Port procured 607 MWhs of electricity products during CP1 from contracts or ownership agreement executed on or after June 1, 2010. This equates to a portfolio balance requirement of 50 percent of 607 MWhs, or 304 MWhs of electricity products from Portfolio Content Category 1. Commission staff determined that all 607 MWhs of electricity products procured by the Port were from Portfolio Content Category 3. Therefore, the Port had no procurement of electricity products from Portfolio Content Category 1, resulting in a deficit of 304 MWhs of electricity products from Portfolio Content Category 1.

### D. Application of Optional Compliance Measures

If a POU does not procure enough electricity products from eligible renewable energy resources to meet its RPS procurement target or portfolio balance requirements, it may elect to apply one of several optional compliance measures that it has adopted to excuse its procurement deficits. These optional compliance measures include 1) delay of timely compliance,<sup>11</sup> 2) cost limitations,<sup>12</sup> and 3) portfolio balance requirement reductions.<sup>13</sup> In order for a POU to take advantage of an optional compliance measure, the measure must satisfy the requirements in the Commission's regulations and must have been adopted by the POU and described in its renewable energy resources procurement plan or enforcement program for the compliance period.<sup>14</sup> If a POU's adopted optional compliance measure satisfies the Commission's regulations and is applied by the POU as adopted, the POU's procurement deficit for the compliance period is excused and the POU is deemed to have satisfied its RPS procurement requirements.

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<sup>11</sup> 20 CCR, § 3206 (a)(2). In general, a POU's adopted delay of timely compliance rule may be invoked if the POU demonstrates that conditions beyond its control caused the delay in satisfying its RPS procurement requirements. The causes for the delay must be based on 1) inadequate transmission capacity to allow sufficient electricity to be delivered from eligible renewable energy resources, 2) permitting, interconnection, or other circumstances that have delayed procured eligible renewable energy projects, or there is insufficient supply of eligible renewable energy resources available to the POU, or 3) unanticipated curtailment of eligible renewable energy resources was necessary to address the needs of a balancing authority.

<sup>12</sup> 20 CCR, § 3206 (a)(3). In general, a POU's adopted cost limitation rule may be invoked when the procurement expenditures for additional eligible renewable energy resources meet or exceed the POU's cost limitation. The cost limitation must be set at a level that prevents disproportionate rate impacts. The cost of all procurement credited toward achieving the RPS must be counted by the POU toward the cost limitation, but the procurement expenditures may not include the POU's indirect expenses such as imbalance energy charges, sales of excess energy, decreased generation from existing resources, transmission upgrades, or costs associated with the relicensing of a POU's hydroelectric facilities. Additionally, in adopting the cost limitation, the POU must rely on its most recent renewable energy resource procurement plan, procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources, and the potential that some planned resource additions may be delayed or canceled. Lastly, when applying a cost limitation, the POU may only apply those procurement expenditures that are permitted under the POU's adopted cost limitation rule.

<sup>13</sup> 20 CCR, § 3206 (a)(4). In general, a POU's adopted portfolio balance reduction rule may be invoked to reduce its minimum PCC 1 requirement if the need for the reduction results from the same conditions required for a delay of timely compliance that were beyond the POU's control.

<sup>14</sup> 20 CCR, § 3206 (b).



The Port reported to Commission staff that it adopted and applied an optional compliance measure for both a delay of timely compliance and a cost limitation. The requirements for adopting, applying, and reporting on optional compliance measures are set forth in sections 3206 and 3207 of the Commission's regulations. With respect to delay of timely compliance, section 3206 (a)(2) provides in pertinent part as follows:

- (a) In meeting its RPS procurement requirements, the governing board of a POU may adopt at a noticed public meeting any of the following measures:  
[. . .]

(2) Delay of timely compliance

- (A) A POU may adopt rules permitting the POU to make a finding that conditions beyond the control of the POU exist to delay the timely compliance with RPS procurement requirements, as defined in section 3204. Such a finding shall be limited to one or more of the following causes for delay and shall demonstrate that the POU would have met its RPS procurement requirements but for the cause of delay:  
[. . .]

- 2. Permitting, interconnection, or other circumstances have delayed procured eligible renewable energy resource projects, or there is an insufficient supply of eligible renewable energy resources available to the POU. The POU must also find that:
  - i. The POU prudently managed portfolio risks, including, but not limited to, holding solicitations for RPS-eligible resources with outreach to market participants and relying on a sufficient number of viable projects to achieve RPS procurement requirements.
  - ii. The POU sought to develop either its own eligible renewable energy resources, transmission to interconnect to eligible renewable energy resources, or energy storage used to integrate eligible renewable energy resources.
  - iii. The POU procured an appropriate minimum margin of procurement above the level necessary to comply with the RPS to compensate for foreseeable delays or insufficient supply.
  - iv. The POU had taken reasonable measures to procure cost-effective distributed generation and allowable unbundled RECs.<sup>15</sup>

With respect to cost limitations, section 3206 (a)(3) provides in pertinent part as follows:

- (3) Cost limitations.
  - (A) A POU may adopt rules for cost limitations on the procurement expenditures used to comply with its RPS procurement requirements.
  - (B) Such cost limitation rules shall ensure that:
    - 1. The limitation is set at a level that prevents disproportionate rate impacts.

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<sup>15</sup> 20 CCR, § 3206 (a)(2).

2. The costs of all procurement credited toward achieving the RPS are counted toward the limitation.
  3. Procurement expenditures do not include any indirect expenses including, without limitation, imbalance energy charges, sale of excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any POU-owned hydroelectric facilities.
- (C) In adopting cost limitation rules, the POU shall rely on all of the following:
1. The most recent renewables energy resources procurement plan.
  2. Procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources.
  3. The potential that some planned resource additions may be delayed or canceled.
- (D) When applying procurement expenditures under an adopted cost limitation rule, the POU shall apply only those types of procurement expenditures that are permitted under the adopted cost limitation rule.
- (E) Adopted cost limitation rules shall include planned actions to be taken in the event the projected cost of meeting the RPS procurement requirements exceeds the cost limitation. [¶. . . ¶]<sup>16</sup>

Additionally, section 3206 (b) provides in pertinent part as follows:

- (b) Rules adopted under this section 3206 shall be in place and described in a POU's renewable energy resources procurement plan or enforcement program for a given compliance period if the POU intends to rely on these rules to satisfy or delay its RPS procurement requirements. The Commission may, when hearing a complaint against a POU under section 1240, consider the date of adoption of any rules adopted pursuant to this section that the POU relied upon to satisfy or delay its RPS procurement requirements.<sup>17</sup>

Additionally, section 3206 (g) provides in pertinent part as follows:

- (g) In determining a POU's compliance with the RPS procurement requirements, the Commission will not consider the application of any rule or rule revision adopted by a POU under this section 3206 that the Commission determines does not comply with Public Utilities Code section 399.30, these regulations, or any applicable order or decision adopted by the Commission pertaining to the RPS.<sup>18</sup>

With respect to reporting on optional compliance measures, section 3207 (d)(6) provides in pertinent part as follows:

- (d) By July 1, 2014; July 1, 2017; July 1, 2021; and by July 1 of each year thereafter, each POU shall submit to the Commission a compliance report that

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<sup>16</sup> 20 CCR, § 3206 (a)(3).

<sup>17</sup> 20 CCR, § 3206 (b).

<sup>18</sup> 20 CCR, § 3206 (g).

addresses the reporting requirements of section 3207 (c) and the following information for the preceding compliance period: [¶. . . ¶]

(6) If a POU's compliance report indicates that the POU's RPS procurement requirements were not met, the POU shall provide documentation to justify the application of any optional compliance measures adopted by the POU in accordance with section 3206. The documentation shall include all reports, analyses, proposed findings, and any other information upon which the POU relied in applying the measure. The POU shall also submit an updated enforcement program and/or procurement plan that includes a schedule identifying potential sources of electricity products currently available or anticipated to be available in the future for meeting the POU's shortfall.

(A) If a POU applies adopted cost limitation measures, the POU shall report that cost limitation to the Commission in dollars spent during the compliance period. The POU shall also provide the Commission with an estimate of the total cost for the POU to procure sufficient electricity products to meet its RPS procurement requirements for the preceding compliance period. The POU shall additionally report on actions taken in response to RPS procurement expenditures meeting or exceeding the cost limitation.<sup>19</sup>

Based on the information reported by the Port, Commission staff determined that the Port did not adopt a delay of timely compliance or cost limitation rule in accordance with section 3206 (b). Refer to Commission staff's *Evaluation of Port of Stockton's Applied Optional Compliance Measures* included as Exhibit F.

The Port's *Renewables Portfolio Standard Procurement Plan*, dated November 20, 2012, does not describe any optional compliance measures. This procurement plan is included as Exhibit G. The Port provided no documentation to indicate that its procurement plan was formally adopted by the governing board for the Port. Nor did the Port provide any documentation to indicate its governing board had adopted a delay of timely compliance or cost limitation rule for the 2011 -2013 RPS compliance period. In fact, in a response to Commission staff's data request of September 5, 2017, the Port acknowledged that it did not adopt an optional compliance measure for the 2011-2013 compliance period. Refer to the Port's *Response to September 5, 2017 Data Request* included as Exhibit H. In this response the Port responded as follows to Commission staff's inquiry:

2. The Port's RPS procurement plan (and update) does not discuss optional compliance measures (cost limitations and delay of timely compliance). Did the Port adopt/approve any other versions of the RPS procurement plans during Compliance Period 1 that describe optional compliance measures, or was the application of optional compliance measures left entirely to the discretion of the utility director?

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<sup>19</sup> 20 CCR, § 3207 (d)(6).

**The only Procurement Plan approved during Compliance Period 1 is the version dated November 20, 2012, which is currently posted to the CEC's website. The application of optional compliance measures was left to the discretion of the utility director, based on the Board's direction and longstanding policies provided during Commission Meetings.<sup>20</sup>**

In accordance with section 3206 (g), Commission staff did not consider the application of an optional compliance measure by the Port in determining the Port's RPS compliance for CP1, because the Port did not adopt an optional compliance measure that satisfied the Commission's requirements in section 3206 (b).

## **F. Equitable Considerations**

Even though the Port did not meet its RPS procurement requirements for CP1, and is not excused by the application of an optional compliance measure, Commission staff believes there are compelling reasons for excusing the Port's procurement deficits and not finding the Port in violation of its RPS procurement requirements. These reasons include 1) the Port met most, but not all, of the regulatory requirements for applying optional compliance measures, 2) the Port's actions in attempting to satisfy its RPS procurements requirements appeared reasonable, and 3) the timing associated with the adoption of Senate Bill (SB) X1-2 (Stats. 2011, 1<sup>st</sup> ex. sess., ch. 1) may have affected the Port's efforts to satisfy its RPS procurement requirements. Additionally, the Port may raise other potential mitigating circumstances.

### **1. Port's Adoption of Optional Compliance Measures**

As described in Commission staff's *Evaluation of Port of Stockton's Applied Optional Compliance Measures*, the Port would have met all of the regulatory requirements for the adoption and application of optional compliance measures, thereby satisfying its RPS requirements, if the Port had adopted its cost limitation and delay of timely compliance measures and described these measures in an adopted RPS Procurement Plan before the end of the 2011-2013 compliance period.

#### Delay of Timely Compliance

As required for the delay of timely compliance measure, the Port demonstrated that it would have satisfied its RPS procurement requirements if it had not encountered the delay in development of two solar facilities, as discussed below. The Port also demonstrated that it held solicitations for RPS-eligible resources, relied on a sufficient number of projects, sought to develop its own RPS-eligible resources, and took reasonable measures to procure cost-effective distributed generation and allowable unbundled renewable energy credits (RECs). The one requirement not met by the Port was that the delay of timely compliance measure was not adopted by the governing board of the Port or described in an adopted RPS procurement plan or enforcement program for the Port.

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<sup>20</sup> Response to September 5, 2017 Data Request, Exhibit D, p. 1.

## Cost Limitation

The Port's Executive Director implemented the following cost limitation rules: if the Port's operating reserve target was met, the cost limitation in dollars is calculated by determining the rate difference between the Port's rate and the target rate and multiplying the difference by the retail sales in kilowatt-hours (kWhs). However, if the target rate difference is not within the 95 percent target, or the Port's operating reserve target was not met, the cost limitation for the following year would be zero dollars. Based on prior year rates and operating reserves, the Port's cost limitation was zero dollars for each year of CP1.

As required for the cost limitation measure, the Port demonstrated that, had its cost limitation been formally adopted by the governing board of the Port and described in the Port's RPS procurement plan or enforcement program, the cost limitation was 1) set at a level to prevent a disproportionate rate impact and 2) established based on information in its most recent RPS procurement plan, the expected cost of building, owning, and operating eligible renewable energy resources, and the potential that planned resource additions may be delayed or canceled. The Port also reported the dollar amount of its cost limitation, the amount it spent on renewables and the expenditures applied to the cost limitation, and an estimate of the amount it would have needed to spend to meet the full RPS procurement requirements. Lastly, the Port reported actions planned and taken in response to exceeding its cost limitation. The only requirement not met by the Port was that the cost limitation rules were not adopted by the governing board of the Port or described in an adopted RPS procurement plan or enforcement program for the Port.

## **2. Port's Procurement Actions**

Staff believes the Port took reasonable actions in attempting to procure eligible renewable energy resources to satisfy its RPS procurement requirements. As described in Commission staff's *Evaluation of Port of Stockton's Applied Optional Compliance Measures*, the Port spent considerable time and effort towards the development of a local solar resource.

The Port first entered into a development agreement in 2010 to purchase renewable energy from a proposed 20 MW rooftop solar facility located on the Port's warehouse facilities. The proposed project would have sold a portion of its output to the Port, as the output was more than seven times the size of the Port's total retail load. The Port anticipated that the project would be fast tracked and operational by late 2011, and would generate enough electricity to satisfy its RPS procurement requirements. However, after difficulty in completing a System Impact Study (SIS), multiple cluster study issues, and increased project costs, the developer abandoned the project.

The Port responded to the 20 MW project cancellation by pursuing a smaller, "right-sized" project. The Port considered multiple proposals for developing or purchasing the output from eligible renewable energy resources, including roof- and ground- mounted solar systems ranging from 0.5–2 MW in size and a large biomass facility. In November 2012, the Port issued a revised RPS procurement plan focusing on the development of a 1.5–2 MW local solar project, the output of which the Port would supplement with the purchase of unbundled RECs. However, according to the Port, a new SIS was required for the proposed smaller solar project pursuant to

the terms of the Port's interconnection agreement with Pacific Gas & Electric Company (PG&E). According to the Port, it requested and paid PG&E for the SIS on January 3, 2013, but the study was not completed until January 2014. Upon completion of the study, which found no significant impacts, the Port reevaluated the cost effectiveness of the project compared to other renewable market options for RPS compliance and suspended the project in favor of purchasing RECs from RPS-certified generation in 2017.

Despite the Port's repeated attempts to develop and procure generation from a local solar facility, the many delays it encountered left the Port with few options to procure sufficient electricity products for CP1. Beginning in 2014, the Port changed its focus to the procurement of electricity products from its current power supplier. Using this approach, the Port has reported the procurement of electricity products sufficient to exceed its RPS procurement requirements for the 2014-2016 RPS compliance period.

### **3. Timing of Passage of SBX1-2**

SBX1-2 adjusted the RPS procurement targets from 20 percent by 2010 to an average of 20 percent for the years 2011 through 2013, and expanded these requirements to apply to POUs for the first time. SBX1-2 subjected POUs to the same or similar RPS requirements as retail sellers of electricity (such as PG&E), and required POUs to meet these procurement requirements using eligible renewable energy resources certified for the RPS by the Commission. Prior to SB X1-2, POUs had discretion to establish and enforce their own RPS policies and were not required to meet their RPS policies using eligible renewable energy resources certified by the Commission.

SBX1-2 was signed into law on April 12, 2011, but became effective on December 10, 2011, pursuant to Government Code section 9600 (a); 91 days after the adjournment of the 2011-2012 first extraordinary legislative session. As such, SBX1-2 was not effective until approximately one year into the 2011-2013 compliance period. Since POUs were not subject to this mandate prior to the enactment of SBX1-2, the timing associated with the enactment of the legislation may have limited the ability for POUs to sufficiently plan for and procure sufficient eligible renewable resources to meet the 2011-2013 compliance period procurement requirements. This is especially true as electricity procurement decisions may require years of upfront planning, particularly for the development of new facilities.

In addition, the timing of SBX1-2's enactment impacted the Commission's ability to adopt the *RPS POU Regulations* in a timeframe that provided POUs with additional guidance on how to comply with the RPS, including the adoption and application of optional compliance measures.

### **4. Other Mitigating Circumstances**

There may be other mitigating factors and circumstances that are relevant to the Port's situation and justify a waiver of its RPS procurement deficits for CP1. The Port may raise these mitigating circumstances in its answer to this complaint pursuant to section 1240 (d) of the Commission's regulations. Section 1240 (d)(1) permits a POU, in its answer to a complaint, to

include information deemed relevant by the POU regarding any mitigating or otherwise pertinent factors related to any alleged violation. The information may describe all relevant circumstances including, but not limited to, the extent to which the alleged violations have or will cause harm, the nature and expected persistence of the alleged violation, the history of past violations, any actions taken by the POU to mitigate the alleged violation, and the financial burden on the POU.

#### **5. Commission's Consideration of Mitigating Circumstances**

When considering potential violations of the RPS, it is appropriate for the Commission to consider any mitigating circumstances. These mitigating circumstances may be raised by Commission staff in the complaint or by a POU in its answer to the complaint.

Based on the mitigating circumstances discussed above, Commission staff believes it is appropriate for the Commission to excuse the Port's procurement deficits for CP1 and not find the Port in violation of any RPS procurement requirements as alleged in this complaint.

#### **IV. REQUESTED ACTION BY COMMISSION STAFF**

Staff requests that the Commission consider the mitigating circumstances discussed in Section III.F above, along with any other mitigating circumstances raised by the Port in its answer, and find that these mitigating circumstances excuse the Port's procurement deficits and alleged violations of the RPS for the 2011-2013 compliance period.

Staff further requests that the Commission consider this complaint in a bifurcated, two-phased manner, such that the mitigating circumstances are considered separate and in advance of the merits of the alleged violations, and that a determination on these mitigating circumstances be rendered prior to a determination of the alleged violations. If the Commission determines that the mitigating circumstances excuse the Port's alleged violations, staff request that the Commission end the adjudication at that point, rather than complete the adjudication on the merits of the alleged violations.

Staff further requests that the adjudication regarding the mitigation circumstances be open to other POUs so that they may provide input on whether the above noted mitigating circumstances impacted their procurement activities for the 2011-2013 compliance period.

In addressing staff's request, the Commission may want to modify the process for the Port to provide an answer to the complaint, such that the Port is permitted to first file an initial answer addressing mitigating circumstances, and then be permitted to file a subsequent answer regarding the alleged violations if the Commission determines the Port's procurement deficits are not excused by virtue of the mitigating circumstances.

If the Commission determines the Port's procurement deficits are not excused by virtue of the mitigating circumstances, staff requests that the Commission determine that the Port failed to satisfy its RPS procurement requirements as alleged in this complaint. The alleged violations are summarized as follows:

1. Violation of 20 CCR section 3204 (a)(1). The Port had an RPS procurement requirement of 7,357 MWhs of electricity products for CP1 and procured only 152 MWhs of electricity products towards satisfying this requirement for CP1. Therefore, the Port had a procurement target deficit of 7,205 MWhs for CP1.
2. Violation of 20 CCR section 3204 (c). The Port had an RPS portfolio balance requirement of 304 MWhs of electricity products from Portfolio Content Category 1 for CP1, but procured no electricity products from Portfolio Content Category 1. Therefore, the Port had a portfolio balance deficit of 304 MWhs of electricity products from Portfolio Content Category 1.

## **V. COMMISSION AUTHORITY FOR REQUESTED ACTION**

The Commission has authority to consider the Port's mitigating circumstances and decide, based on these mitigating circumstances, whether to excuse the Port's procurement deficits for the 2011-2013 compliance period and its alleged violations of the RPS for this compliance period. The *RPS POU Regulations* recognize the Commission's authority in this regard and permit a POU to raise any and all mitigating circumstances in its answer to a complaint pursuant to section 1240 (d).

Additionally, the Commission, through the Chair or the presiding member of a Commission-designated committee, has authority to address staff's procedural request that the Commission consider this complaint in a bifurcated, two-phased manner. Section 1203 (c) of the Commission regulations permit the Chair or presiding member to regulate the conduct of the Commission's proceedings and hearings, including, but not limited to, "disposing of procedural requests, ordering the consolidation or severance of any part, or all, or any proceeding or hearing, admitting or excluding evidence, designating the subject matter, scope, time of presentation, and order of appearance of persons making oral comments or testimony, accepting stipulations of law or fact, and continuing the hearings."<sup>21</sup>

## **VI. COMPLAINT EXECUTION**

The complaint is executed this 8th day of January 2018.



**Drew Bohan**  
Executive Director  
California Energy Commission

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<sup>21</sup> 20 CCR, § 1203 (c).



**COMPLAINT BY CALIFORNIA ENERGY COMMISSION EXECUTIVE DIRECTOR  
AGAINST THE STOCKTON PORT DISTRICT  
FOR NONCOMPLIANCE WITH THE RENEWABLES PORTFOLIO STANDARD**

**LIST OF EXHIBITS**

- Exhibit A – *Renewables Portfolio Standard Verification Results: Port of Stockton, Compliance Period 1* Report and Corresponding California Energy Commission Resolution
- Exhibit B – Information Reported by the Port of Stockton to the California Energy Commission for the 2011-21013 Compliance Period
- Exhibit C – Draft Verification Tables and Draft Verification Results Report for the Port of Stockton for the 2011-2013 Compliance Period
- Exhibit D – Staff Email Transmitting Draft Verification Tables and Draft Verification Results Report for the 2011-2013 Compliance Period to Port of Stockton
- Exhibit E – Port of Stockton Response to Staff Email Transmitting Draft Verification Tables and Draft Verification Results Report for the 2011-2013 Compliance Period
- Exhibit F – Staff's Evaluation of the Port of Stockton's Applied Optional Compliance Measures for the 2011-2013 Compliance Period
- Exhibit G – Port of Stockton's Renewables Portfolio Standard Procurement Plan, dated November 20, 2012
- Exhibit H – Port of Stockton Response to Staff's Data Request Dated September 5, 2017