

DOCKETED

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Project Title:	Complaint Against the Stockton Port District re: RPS Program Compliance
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Document Title:	Motion for Bifurcated, Two-Phased Proceeding and Proposed Order for Bifurcated, Two-Phased Proceeding
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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

IN THE MATTER OF:

**COMPLAINT AGAINST STOCKTON PORT DISTRICT
FOR NONCOMPLIANCE WITH THE RENEWABLES
PORTFOLIO STANDARD**

DOCKET No. _____

**MOTION FOR BIFURCATED, TWO-PHASED PROCEEDING AND
PROPOSED ORDER FOR BIFURCATED, TWO-PHASED PROCEEDING**

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January 8, 2018



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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**COMPLAINT AGAINST STOCKTON PORT DISTRICT
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**MOTION FOR BIFURCATED, TWO-PHASED PROCEEDING AND
PROPOSED ORDER FOR BIFURCATED, TWO-PHASED PROCEEDING**

Pursuant to California Code of Regulations, title 20, sections 1203(c) and 1211.5(a) the Executive Director of the California Energy Commission (Commission), on behalf of Commission staff, hereby moves for the Commission to bifurcate the proceeding in the matter of the Complaint against Stockton Port District (Port) for Noncompliance with the Renewables Portfolio Standard into a two-phased proceeding whereby:

- (1) The Commission consider the complaint in a bifurcated, two-phased manner, such that the mitigating circumstances raised in the proceeding are considered separate and in advance of the merits of the alleged violations contained in the Complaint and that a determination on the mitigating circumstances be rendered by the Commission prior to a determination of the alleged violations;
- (2) If the Commission determines that the mitigating circumstances excuse the Port's alleged violations, the Commission end the adjudication at that point, rather than complete the adjudication on the merits of the alleged violations in the Complaint;
- (3) The adjudication regarding the mitigating circumstances be open to other Local Publicly Owned Electric Utilities so that they may provide input on whether the mitigating circumstances raised in the Complaint impacted their procurement activities for the 2011-2013 compliance period; and
- (4) The Port be permitted to first file an initial answer addressing the mitigating circumstances portion of the proceeding, and then be permitted to file a subsequent answer regarding the alleged violations in the Complaint if the Commission determines the Port's procurement deficits are not excused by virtue of the mitigating circumstances.

Background

Concurrent with the filing of this Motion, the Executive Director of the Commission, on behalf of Commission staff, is filing a Complaint against the Port. The Complaint is being filed pursuant to the California Code of Regulations, title 20, article 5, including section 1240. Section 1240 (b) provides that the Executive Director of the Commission may file a complaint against a local publicly owned electric utility (POU) for failure to meet a RPS requirement, or any regulation, order, or decision adopted by the Commission pertaining to the RPS for POUs.

The Complaint alleges that the Port failed to satisfy its RPS procurement requirements for the 2011-2013 compliance period and was not otherwise excused from satisfying these requirements by the application of optional compliance measures in accordance with the Commission's regulations in California Code of Regulations, title 20, sections 1240 and 3200 – 3208.

Even though the Port did not meet its RPS procurement requirements for the 2011-2013 compliance period, 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 enactment of Senate Bill X1-2 (Stats. 2011, 1st 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.

Argument

1. The Complaint proceeding should be bifurcated into a two-phased proceeding and Commission is authorized to so order.

The proceedings should be bifurcated into a two-phased proceeding in order for the complaint to be adjudicated in the most efficient manner possible for the Commission and the parties, and for the administration and enforcement of the RPS program.

Bifurcating the proceedings into a two-phased proceeding would allow the issues raised by the relevant mitigating circumstances to be addressed during phase one. During phase one the parties would respond to only those issues relevant to the mitigating circumstances and the Commission would only be required to make a determination on the issues relevant to the mitigating circumstances, which could effectively end the proceeding if the Commission determines that the mitigating circumstances excuse the Port's alleged violations. The possibility of ending the proceeding after phase one would result in a more efficient proceeding for the Commission, the parties, and the administration and enforcement of the RPS program.

If in phase one of the proceeding the Commission determines the Port's procurement deficits are not excused by virtue of the mitigating circumstances then the proceeding would continue into phase two where the parties and the Commission would address the alleged violations identified in the Complaint. Only during phase two would the parties respond to issues relevant to the merits of the alleged violations in the Complaint, and only then would the Commission make a determination on the issues relevant to the merits of the alleged violations.

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 the complaint in a bifurcated, two-phased manner. The Commission's regulations in California Code of Regulations title 20, section 1203(c) permits 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." (Cal. Code Regs., tit. 20, § 1203 (c).)

Commission staff recognizes that California Code of Regulations, title 20, section 1211.5(a) only permits motions to be filed by a "party" to a proceeding, and that at this time a proceeding has not been opened to adjudicate the Complaint against the Port, and therefore Commission staff is not yet a "party" in the proceeding. However, Commission staff fully expects the Commission to open a proceeding to adjudicate the Complaint against the Port. In anticipation of that proceeding Commission staff hereby files the subject motion so that the complaint may be adjudicated in most efficient manner possible for the Commission, Port and staff, and for the administration and enforcement of the RPS program.

If the Commission accepts the Complaint against the Port and opens a proceeding to adjudicate the Complaint, Commission staff requests that the motion be accepted as being filed by a "party" on that date.

2. Adjudication of the mitigation circumstances be open to other POUs and Commission is authorized to so order.

The adjudication regarding the mitigating circumstances should 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.

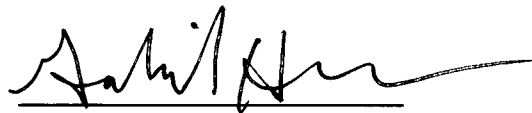
Allowing other POUs to provide input is consistent with section 1240 (c), which provides: "Any person or entity may participate in a proceeding filed under this section but shall not be entitled to intervene or otherwise become a party to the proceeding. Participation includes the ability to provide oral and written comments in the proceeding." (Cal. Code Regs, tit. 20, § 1240(c).)

Proposed Order

Attached for consideration is a draft order for implementing Commission staff's motion for a bifurcated, two-phased proceeding.

Dated this 8th day of January 2018.

Respectfully submitted,
CALIFORNIA ENERGY COMMISSION

A handwritten signature in black ink, appearing to read 'Gabriel Herrera', is written over a horizontal line.

Gabriel Herrera

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**Before the Energy Resources Conservation and Development
Commission of the State of California
1516 Ninth Street, Sacramento, CA 95814
1-800-822-6228 – www.energy.ca.gov**

In the Matter of:

Docket No. _____

**Complaint Against Stockton Port District
for Noncompliance with the Renewables
Portfolio Standard**

**[PROPOSED]
ORDER GRANTING COMMISSION STAFF MOTION
for bifurcated, two-phased proceeding**

Pursuant to California Code of Regulations, title 20, sections 1203(c), the Chair of the California Energy Commission issues the following Order approving staff's December 29, 2017 request for a bifurcated, two-phased proceeding to adjudicate the Complaint against the Stockton Port District (Port) for noncompliance with the Renewables Portfolio Standard (RPS).

Background

On December 29, 2017, the Executive Director of the California Energy Commission (Commission) on behalf of Commission staff filed a Complaint against the Port pursuant to the California Code of Regulations title 20, article 5, including section 1240, and concurrently filed a Motion for a bifurcated, two-phased proceeding pursuant to California Code of Regulations, title 20, sections 1203(c) and 1211.5(a). The Complaint alleges that the Port failed to satisfy its RPS procurement requirements for the 2011-2013 compliance period and was not otherwise excused from satisfying these requirements by the application of optional compliance measures in accordance with the Commission's regulations in California Code of Regulations, title 20, sections 1240 and 3200 – 3208.

The Motion requests:

- (1) The Commission consider the complaint in a bifurcated, two-phased manner, such that the mitigating circumstances raised in the proceeding are considered separate and in advance of the merits of the alleged violations contained in the Complaint and that a determination on the mitigating circumstances be rendered by the Commission prior to a determination of the alleged violations;

- (2) If the Commission determines that the mitigating circumstances excuse the Port's alleged violations, the Commission end the adjudication at that point, rather than complete the adjudication on the merits of the alleged violations in the Complaint;
- (3) The adjudication regarding the mitigating circumstances be open to other Local Publicly Owned Electric Utilities (POUs) so that they may provide input on whether the mitigating circumstances raised in the Complaint impacted their procurement activities for the 2011-2013 compliance period; and
- (4) The Port be permitted to first file an initial answer addressing the mitigating circumstances portion of the proceeding, and then be permitted to file a subsequent answer regarding the alleged violations in the Complaint if the Commission determines the Port's procurement deficits are not excused by virtue of the mitigating circumstances.

Order Granting Staff Motion

Pursuant to California Code of Regulations title 20, section 1240(c) this proceeding shall accept written comments from other POUs regarding whether the mitigating circumstances raised in the Complaint or in the Port's answer to the Complaint impacted their procurement activities for the 2011-2013 compliance period.

Pursuant to California Code of Regulations title 20, section 1203(c) this proceeding shall be bifurcated into the following two phases:

- (1) Phase One:** Consideration and determination regarding mitigating circumstances raised in the Complaint or in the Port's answer to the Complaint.

The Port is permitted to file a Phase One answer to address the mitigating circumstances and any other issues raised during Phase One without addressing the alleged violations in the Complaint until Phase Two of the proceeding. The Port's answer must be filed within 45 calendar days after service of the Complaint as specified in California Code of Regulations, title 20, section 1240(d). Commission staff and the Port may file replies within the timeframes specified in section 1240(e).

If the Commission determines that the Port's alleged violations are excused based on mitigating circumstances, the adjudication will be so ordered and the proceeding will be terminated.

If the Commission determines the Port is not excused based on mitigating circumstances, then the Commission will proceed to Phase Two of the proceeding.

(2) Phase Two: Consideration and determination regarding the merits of the alleged violations in the Complaint against the Port for failure to satisfy its RPS procurement requirements for the 2011-2013 compliance period.

During Phase Two of the proceeding the Port is permitted to file an additional answer addressing the alleged violations in the Complaint. The Port's answer must be filed within 30 calendar days after the Commission's determination for Phase One of the proceeding. Commission staff and the Port may file replies within the timeframes specified in section 1240(e).

Dated: _____, at Sacramento, California.

Robert Weisenmiller, Chair
California Energy Commission