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**STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:

Complaint Against Stockton Port District for
Noncompliance With the Renewables Portfolio
Standard

Docket No. 18-RPS-01

**PORT OF STOCKTON RESPONSE TO COMMITTEE RESPONSE
TO STAFF MOTION TO BIFURCATE AND
ORDER FOR ADDITIONAL INFORMATION**

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Dated: March 30, 2018

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The Port of Stockton (“Port”) hereby submits this response to the *Committee Response to Staff Motion to Bifurcate and Order for Additional Information* (“Order”), submitted on March 9, 2018. In the Order, the Committee directs the Port to: (1) “file a brief summary of areas of factual agreement and dispute between the Port and Staff with respect to the alleged noncompliance with the RPS Program requirements;”¹ (2) “summarize any additional or different evidence that they would present in the event that the matter is adjudicated;”² and (3) “identify all mitigating circumstances that may have inhibited the Port’s compliance with the RPS Program requirements.”³ The Order also clarifies that “the Port will be provided with the opportunity to file the additional information it believes is necessary to fully present its case.”⁴

I. AREAS OF FACTUAL AGREEMENT

Based on the facts set forth in the *Complaint by California Energy Commission Executive Director Against the Stockton Port District* (“Complaint”), filed on January 8, 2018, the Port

¹ Order at 2.

² *Id.*

³ *Id.*

⁴ *Id.*

believes there is general agreement on the majority of factual matters in this proceeding. This includes the following:

A. Procurement Target Requirement

The Port generally agrees with the statements contained in Section II.C.1 of the Complaint, describing the Renewables Portfolio Standard (“RPS”) Procurement Target Requirement and the summarizing the Port’s procurement counting toward that requirement. As stated in the Complaint, this information was contained in the *Renewables Portfolio Standard Verification Results: Port of Stockton, Compliance Period 1* (“Port CP1 Verification Results”), submitted on January 1, 2030, and adopted by the California Energy Commission (“Commission”) on January 25, 2017.

B. Portfolio Balance Requirement

The Port generally agrees with the statements contained in Section II.C.2 of the Complaint, describing the RPS Portfolio Balance Requirement and the summarizing the Port’s procurement counting toward that requirement. As stated in the Complaint, this information was contained in the Port CP1 Verification Results.

C. Optional Compliance Measure Requirements

The Port generally agrees with the Complaint’s description of the requirements for application of optional compliance measures as stated in the first and second paragraphs of Section III.D of the Complaint, and the citations to the relevant provisions of the Commission’s *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Utilities*, including California Code of Regulations, title 20, sections 3206 (a)(2), 3206 (a)(3), 3206 (a)(4), 3206 (b), 3206 (g), and 3207 (d)(6).

D. Equitable Considerations

The Port generally agrees with description provided in Section III.F.2 of the Complaint, regarding the Port's procurement actions. The Port also generally agrees with the description contained in in Section III.F.3 of the Complaint, describing the mitigating factor relating to the timing of passage of SB X1-2.

II. AREAS OF FACTUAL DISPUTE AND ADDITIONAL EVIDENCE

The Complaint asserts that the Port met *all requirements* except for the formal adoption requirement:

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.⁵

The Port's primary disagreement with the Complaint is this assertion that the Port did not meet the adoption requirements for the delay of timely compliance and cost limitation optional compliance measures. If the Port's alleged violation is adjudicated, the Port intends to demonstrate that the Port's actions either directly met the relevant statutory and regulatory requirements applicable to both the cost limitation and delay of timely compliance or, alternatively, that the Port's actions constitute substantial compliance⁶ with the relevant statutory and regulatory requirements.

Specifically, the Port's actions constituting either full compliance or substantial compliance include: (1) the Port Board of Commissioners' delegation of authority to the Port

⁵ Complaint at 11.

⁶ See generally, *Downtown Palo Alto Com. for Fair Assessment v. City Council*, 180 Cal. App. 3d 384, 394-5 (1986) ("Unless the intent of the statute can only be served by demanding strict compliance with its terms, substantial compliance is the governing test. . . . It is only where statutory requirements are accorded 'mandatory' rather than 'directory' effect that failure to comply with a particular procedural step will result in invalidating the governmental action to which the procedural requirement relates. . . . And unless a contrary intent is manifestly expressed, such requirements will be deemed directory rather than mandatory.").

Director pursuant to Resolution #7681, dated August 2, 2010; (2) the Port's properly noticed public meeting on December 20, 2012 for presenting its RPS Procurement Plan to its customers, the public, and the Port's Board of Commissioners; (3) the content of the RPS Procurement Plan, including key elements of both a cost limitation and delay of timely compliance, such as the description of the plan to procure solar resources,⁷ the comparison to Pacific Gas and Electric rates,⁸ and the clarification that the Port Director is authorized to implement and take necessary steps to meet the RPS;⁹ (4) the Port Staff discussion of the RPS program and compliance options made to the Port Commission during the Commission meeting adopting the Port's Budget; and (5) the Port Commission's adoption of the 2013/2014 Port Budget that is consistent with the application of the Port's delay of timely compliance and cost limitation provisions.¹⁰

Consistent with this position, the Port disagrees with the Complaint's statement regarding the Port's response to Commission Staff's September 5, 2017 data request, which the Complaint characterized as follows:

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.¹¹

The Port acknowledges that the Port's RPS Procurement Plan does not expressly reference a cost limitation or delay of timely compliance provision, however the five actions specified in the prior paragraph do in fact meet the statutory requirements for adoption, or alternatively, constitutes substantial compliance. Therefore, the Port does not acknowledge that it did not adopt an optional compliance measure for compliance period 1.

⁷ Port of Stockton, Renewable Portfolio Standard Procurement Plan, California Energy Commission 33% Regulation, Nov. 20, 2012, at 10.

⁸ *Id.*

⁹ *Id.*

¹⁰ Stockton Port District Board of Commissioners Resolution #7832 on June 3, 2013, approving the Port's budget for fiscal year 2013-14.

¹¹ Complaint at 10.

If the alleged violation is adjudicated, the Port anticipates that it would provide additional evidence to support the Port's argument that its actions constitute full compliance or substantial compliance with the adoption requirements of the relevant statutory and regulatory provisions. This would likely include: (1) all documentation provided to customers regarding the Port Commission's meetings on the Port's RPS program; (2) additional information regarding any statements or presentations to the Port of Stockton Commission relating to the RPS Program in the context of the Port's budget; and (3) the Port of Stockton's adopted 2013/2014 budget and how the planned expenditures demonstrate consistency with the cost limitation and delay of timely compliance mechanisms.

III. MITIGATING FACTORS

The Port agrees with the mitigating factors as described in Section III.F of the Complaint. The Port believes that mitigating factors described by Commission staff in the Complaint are sufficient to support excusing the Port's procurement deficits and alleged violation. In addition to the factors included in the Complaint, the following sections include additional relevant mitigating factors.

A. Delay in the Optional Compliance Review Process

Compliance Period 1 spanned from January 1, 2011 until December 31, 2013. The Port of Stockton submitted its Compliance Period 1 Annual Reports and Compliance Report by applicable deadlines. However, Commission staff did not request specific information on the Port's optional compliance mechanisms until July 15, 2016. Beyond some initial discussions, Commission staff did not seek further information from the Port until July 17, 2017.

The slow timeline of the optional compliance review process is a significant mitigating factor. Commission staff did not request clarifying information until three and four years after

the end of the first compliance period. Because the compliance period was three years long, some of the relevant information related to events that took place over six and seven years prior. This delay makes it more likely that relevant evidence may be lost and that individuals with pertinent information will no longer be available. Indeed, key Port staff and consultants that were directly involved in the events at issue have retired. This is a significant limiting factor in the Port's ability to effectively respond to this Complaint.

B. The Port Provides Economic Stimulus to an Economically Disadvantaged Region of the State.

The Port serves as an economic driver in an area of the state that faces persistently high levels of poverty and unemployment. Much of the region in and around the City of Stockton is designated as falling within the top 10 percent of the most impacted census tracts by the California Communities Environmental Health Screening Tool 3.0, which identifies communities that face the highest levels of pollution and are the most economically disadvantaged.¹²

The Port is not a for-profit entity, and all of its costs are passed through to its customers. Applying a penalty to the Port would increase costs to its customers, and diminish the Port's ability to attract new businesses to the region, and would therefore result in harm to broader community served by the Port. A penalty applied to the Port would cause disproportionate harm to its community.

¹² See Office of Environmental Health Hazard Assessment, Update to the California Communities Environmental Health Screening Tool, CalEnviroScreen 3.0, January 2017, *available at*: <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.

C. Penalizing the Port Would Be Inconsistent with the Clear Purpose of the RPS Program.

The Port has undertaken great efforts achieve full compliance and procure sufficient RPS-eligible resources to meet both the procurement requirements and portfolio balance requirements for the Second Compliance Period. Further, the Port anticipates that it will be able to procure sufficient resources to meet the Third Compliance Period procurement requirement and portfolio balance requirements. Additionally, the Port is currently considering ownership and procurement options that will help it comply with the long-term procurement requirements specified in Public Utilities Code section 399.13(b). For extremely small utilities like the Port, compliance with this new requirement is especially challenging. Because of the long-lead time necessary to secure ownership agreements and/or execute long-term contracts, the Port needs to take action now, in order to ensure future compliance.

The Port is an extremely small electric utility that is still working to improve its financial condition. If the Port is subjected to a costly legal proceeding and potentially a financial penalty, it could severely impact the financial viability of the Port's electric utility. This may have the counter impact of making it less likely that the Port will be able to procure sufficient resources to meet the procurement requirement and portfolio balance requirements for the third and fourth compliance periods. Thus, given the size of the Port's electric utility, applying a penalty will increase the likelihood that the Port will rely on an optional compliance mechanism in the third and/or fourth compliance period. Consequently, the application of a penalty could result in the procurement of *less* renewable generation. This is counter to the primary purpose of the RPS.

IV. CONCLUSION

The Port appreciates the opportunity to provide this response to the Committee's Order.

Dated: March 30, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justin Wynne", with a stylized flourish at the end.

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