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<b>Project Title:</b>	Complaint Against the Stockton Port District re: RPS Program Compliance
<b>TN #:</b>	223908
<b>Document Title:</b>	Staff Comments Regarding Additional Evidence Filed by the Stockton Port District
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**BEFORE THE ENERGY RESOURCES CONSERVATION AND  
DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of:

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

Docket No. 18-RPS-01

**STAFF COMMENTS REGARDING ADDITIONAL EVIDENCE  
FILED BY THE STOCKTON PORT DISTRICT**

**I. Introduction**

California Energy Commission Staff (Staff) are providing these comments in response to the additional evidence filed by the Stockton Port District (Port) on June 12, 2018.<sup>1</sup> This evidence was filed by the Port in response to the Committee’s May 29, 2018 order, *Denial of Staff Motion to Bifurcate* (Order), which directed the Port to file a declaration with evidence that “substantiates the factual claims contained in Section II” of the *Port of Stockton Response to Committee Response to Staff Motion to Bifurcate and Order for Additional Information* of March 30, 2018 (Port Response).<sup>2</sup>

In the Port Response the Port states there is general agreement on the majority of factual matters.<sup>3</sup> However, the Port disagrees with the assertion that it did not meet the adoption requirements for delay of timely compliance and cost limitation optional compliance measures.<sup>4</sup> The Port argues that its actions either directly met the relevant statutory and regulatory requirements applicable to both the cost limitation and delay of timely compliance optional compliance measures or, alternatively, that the Port’s actions constitute substantial compliance with the relevant statutory and regulatory requirements.<sup>5</sup>

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<sup>1</sup> The additional evidence is docketed as TN 223788, TN 223789, TN 223790, TN 223791, and TN 223793.

<sup>2</sup> TN 223607, p. 2.

<sup>3</sup> TN 223100, pp. 1-2.

<sup>4</sup> TN 223100, p. 3.

<sup>5</sup> TN 223100, p. 3.

Staff disagrees that the Port's actions either directly met or substantially complied with the relevant statutory and regulatory requirements for adopting optional compliance measures, and believes the evidence filed by the Port on June 12, 2018, fails to demonstrate this.

In Section II of the Port Response the Port states that the following actions constitute full or substantial compliance with the adoption requirements: (1) the Port Board of Commissioners' delegation of authority to the Port 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 its 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, the comparison to Pacific Gas and Electric Company (PG&E) rates, and the clarification that the Port Director is authorized to implement and take necessary steps to meet the RPS; (4) the Port staff discussion of the RPS program and compliance options made to the Port Commission during the Port 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.<sup>6</sup>

The Port stated that if the alleged violation is adjudicated it would provide additional evidence to support its argument that its actions constitute full or substantial compliance.<sup>7</sup> In response to the Order, the Port filed the following evidence:

1. "Public Notice Renewable Resource Procurement Plan" for December 20, 2012;<sup>8</sup>
2. Agenda for the June 3, 2013 meeting of the Board of Port Commissioners, which lists, among other things, the "Presentation, Consideration and Possible Approval of Budget for Fiscal Year 2013/21014;"<sup>9</sup>
3. The "Port of Stockton 2013/2014 Budget";<sup>10</sup>
4. Declaration of Chris Kiriakou, President of Cornerstone Consulting, consultant for the Port from August 2006 to August 2017, that declares, among other things, i) that he attended the December 20, 2012 public meeting and provided a presentation on the

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<sup>6</sup> TN 223100, pp. 3-4.

<sup>7</sup> TN 223100, p.5.

<sup>8</sup> TN 223788.

<sup>9</sup> TN 223789.

<sup>10</sup> TN 223793.

- Port's Renewable Resource Procurement Plan, ii) that prior to June 3, 2013, the Board Commissioners provided "verbal guidance to Port staff and consultants . . . to ensure that Port electric rates were lower than comparable rates offered by Pacific Gas and Electric Company by a sufficient amount and that the Port must build up an operating reserve" and iii) that the "FY 2013/2014 Budget approved by the Port Commission on June 3, 2013 allocated a budget for renewable procurement that is consistent with the use of a cost limitation to comply with the Renewables Portfolio Standard Program";<sup>11</sup> and
5. Declaration of Steve Escobar, Deputy Port Director for the Port, that declares, among other things, i) that prior to June 3, 2013, "the Port Commissioners provided clear guidance through verbal communications that the Port's electric rates must be lower than the rates offered by Pacific Gas and Electric Company by a sufficient amount and that the Port must build up sufficient operating reserves in order for the Port to continue to operate its electric utility" and iii) that "the adopted FY 2013/2014 [budget] allocated a budget to the Port consistent with the use of a cost limitation to meet the compliance requirements of the Renewables Portfolio Standard."<sup>12</sup>

**II. The Port's additional evidence filed on June 12, 2018 does not substantiate the factual allegations from Section II of the Port Response; nor does it support the Port's argument that it fully or substantially complied with the requirement to adopt optional compliance measures the Port intends to use to satisfy compliance with the RPS in its RPS procurement plan or enforcement program.**

**A. The additional evidence filed by the Port on June 12, 2018 does not substantiate the Port's factual claim regarding the Port Board of Commissioner's deletion of authority to the Port Director pursuant to Resolution #7681.**

In Section II of the Port Response, the Port states that the actions constituting full or substantial compliance include the Port Board of Commissioner's deletion of authority to the Port Director pursuant to Resolution #7681 dated August 2, 2010.<sup>13</sup> No additional evidence concerning Resolution #7681 was filed by the Port on June 12, 2018.

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<sup>11</sup> TN 223790.

<sup>12</sup> TN 223791.

<sup>13</sup> TN 223100, pp. 3-4.

The purported Resolution #7681 authorizes the Port Director to execute a contract for the purchase of electrical power and establish, set and charge electricity rates. The resolution provides in pertinent parts as follows:

“Resolved, that the Board of Port Commissioners of the Stockton Port District hereby authorizes the Port Director to enter into an Electrical Service Provisions Agreement; and Resolved Further, that the Port Director is hereby authorized to establish, set and charge rates for the delivery of power to tenants on Rough and Ready Island.”<sup>14</sup>

The resolution does not mention a Renewables Portfolio Standard (RPS) procurement plan or optional compliance measures for the RPS.

It is also important to note that Resolution #7681 was provided to Staff in the form of a printout of an email which did not include a vote count or other documentation of its passage by the Port Board of Commissioners.<sup>15</sup>

Additionally, Resolution #7681 is purported to have been considered and acted upon by the Port Board of Commissioners in August 2010; the year prior to the enactment of Senate Bill X1-2 (Stats. 2011, 1<sup>st</sup> ex. sess., ch. 1), which amended the RPS statute to subject local publicly owned electric utilities (POUs), like the Port, to the same or similar RPS procurement requirements applicable to retail sellers and included the applicability of cost limitation and delay of timely compliance optional compliance measures to POUs.<sup>16</sup>

**B. The additional evidence filed by the Port on June 12, 2018 does not substantiate the Port’s factual claim regarding the Port’s noticed public meeting on December 20, 2012.**

In Section II of the Port Response, the Port states that the actions constituting full or substantial compliance include the Port’s noticed public meeting on December 20, 2012 for presenting its draft RPS Procurement Plan to its customers, the public, and the Port’s Board of Commissioners. In support of this factual allegation the Port filed a “Public Notice Renewable Resource Procurement Plan” for a December 20, 2012 meeting;<sup>17</sup> the declaration of Chris Kiriakou who stated he attended and presented at the December 20, 2012 meeting<sup>18</sup>; and the

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<sup>14</sup> See TN 222161-7, pp. 13-14 of docketed PDF.

<sup>15</sup> See TN 222161-7, pp. 13-14 of docketed PDF.

<sup>16</sup> See Sen. Bill X1-2 (Stats. 2011-2012, 1<sup>st</sup> Ex. Sess., Ch. 1, Simitian), Section 29.

<sup>17</sup> TN 223788.

<sup>18</sup> TN 223790.

declaration of Steve Escobar who stated the filed public notice is a true and correct copy of the notice and it was included in a bill insert prior to the meeting.<sup>19</sup>

These documents do not show whether a majority of the Port Board of Commissioners were in attendance at the meeting or whether the Port Board of Commissioners took any action to adopt or approve the Renewable Resource Procurement Plan which is alleged to have been presented at the meeting.

**C. The additional evidence filed by the Port on June 12, 2018 does not substantiate the Port's factual claim regarding the content of its RPS Procurement Plan.**

In Section II of the Port Response, the Port states that the actions constituting full or substantial compliance include 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, the comparison to Pacific Gas and Electric Company (PG&E) rates, and the clarification that the Port Director is authorized to implement and take necessary steps to meet the RPS.<sup>20</sup>

None of the additional evidence filed by the Port on June 12, 2018 appears to substantiate the contents of the Port's RPS Procurement Plan as including these claimed key elements apart from one line item in the 2013/2014 Fiscal Year Budget entitled "Rough & Ready Solar Power Plant" with \$60,000 budgeted for Fiscal Year 2013/2014 and \$1,800,000 budgeted for Fiscal Year 2014/2015.<sup>21</sup>

The Port's RPS Procurement Plan dated November 20, 2012 includes information regarding the Port's efforts to procure eligible renewable energy resources pursuant to the RPS as well as its rates.<sup>22</sup> However, it is unclear how these references support the Port's argument that it fully or substantially complied with the requirement to adopt optional compliance measures, including requirements that any adopted rules for optional compliance measures be in place and described in a POU's renewable energy resources procurement plan or enforcement

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<sup>19</sup> TN 223791.

<sup>20</sup> TN 223100. p. 4.

<sup>21</sup> TN 223793, page 15 of the budget.

<sup>22</sup> See TN 222161-7.

program for a given compliance period if the POU intends to rely on these such rules to satisfy or delay its RPS procurement requirements.<sup>23</sup>

The Port's RPS Procurement Plan includes a brief statement regarding authorization for the Port Director as follows: "Enforcement of this plan is accomplished through action by the Port's Executive Director to require staff to proceed with its implementation and necessary steps to meet the RPS."<sup>24</sup> This purported authorization does not include any authorization concerning the establishment or adoption of optional compliance measures and is not supported by the additional evidence filed by the Port on June 12, 2018.

**D. The additional evidence filed by the Port on June 12, 2018 does not substantiate the Port's factual claim regarding the Port staff discussions of the RPS program and compliance options during the Port Commission meeting adopting the Port's 2013/2014 fiscal year budget.**

In Section II of the Port Response, the Port states that the actions constituting full or substantial compliance include the Port staff discussion of the RPS program and compliance options made to the Port Commission during the Port Commission meeting adopting the Port's Budget.<sup>25</sup> Staff assumes this statement is intended to refer to the Port's 2013/2014 fiscal year budget.

The additional evidence filed by the Port on June 12, 2018 to substantiate this factual claim appears to consist of the declarations of Chris Kiriakou and Steve Escobar and the Agenda for the June 3, 2013 Port Commission Meeting.

The declarations do not substantiate the factual assertion that there was a discussion of the RPS program and optional compliance options during the Port Commission meeting adopting the Port's 2013/2014 fiscal year budget on June 3, 2013. In his declaration, Chris Kiriakou states that he received "verbal guidance" from Port Commissioners "to ensure Port rates were lower than comparable rates offered by PG&E by a sufficient amount and that the Port must build up an operating reserve."<sup>26</sup> In his declaration, Steve Escobar states that he received "clear guidance" in the form of "verbal communications that the Port's electric rates must be lower than the rates offered by Pacific Gas and Electric Company by a sufficient amount and that the Port

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<sup>23</sup> Cal. Code of Regs., tit. 20, § 3206, subd. (b).

<sup>24</sup> TN 222161-7, page 27 of 402 of docketed PDF.

<sup>25</sup> TN 223100, p. 4

<sup>26</sup> TN 2231790, 2.

must build up sufficient operating reserves in order for the Port to continue to operate its electric utility.”<sup>27</sup> Both declarations state that the verbal communications occurred prior to June 3, 2013, which was the date of the meeting and purported approval of the Port’s 2013/2014 fiscal year budget. Additionally in his declaration, Steve Escobar states that during the June 3, 2013 Port Commission Meeting he described the RPS requirements to Port Commissioners, but he does not indicate that there were any discussions with Port Commissioners regarding optional compliance measures, including delay of timely compliance and cost limitations, or that he received any guidance or direction from the Commissioners regarding optional compliance measures.<sup>28</sup>

On June 12, 2018 the Port also filed a copy of the Agenda for its June 3, 2013 Port Commission Meeting, which included item 8 -- the “presentation, consideration and possible approval of Budget for Fiscal Year 2013/2014” (full capitalization omitted).<sup>29</sup> The Port Board of Commissioners is subject to the meeting requirements of the Ralph M. Brown Act (Government Code § 54950, et seq., “Brown Act”), which governs meetings conducted by local legislative bodies, such as boards of supervisors, city councils, and school boards. The Brown Act establishes public notice and agenda requirements that must be satisfied. At least 72 hours prior to a regular meeting, the legislative body must post an agenda containing a brief general description of each item to be discussed or transacted at the meeting, including items to be discussed in closed session.<sup>30</sup> The Act makes it clear that discussion items must be placed on the agenda, as well as items which may be the subject of action by the body. It is unclear how an item appearing on the Agenda as “presentation, consideration and possible approval of Budget for Fiscal Year 2013/2014” (full capitalization omitted) would result in the Port Board of Commissioners’ adoption of optional compliance measures for the RPS, when neither the Agenda nor the supporting documentation for the Agenda item (the Budget for Fiscal Year 2013/2014) even refers to the RPS or optional compliance measures.

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<sup>27</sup> TN 223791, p.1.

<sup>28</sup> TN 223791, p.2.

<sup>29</sup> TN 223789.

<sup>30</sup> Gov. Code § 54954.2 (a).



**E. The additional evidence filed by the Port on June 12, 2018 does not substantiate the Port's factual claim regarding the Port's adoption of its 2013/2014 Port Budget as consistent with the application of its delay of timely compliance and cost limitation provisions.**

In Section II of the Port Response, the Port states that the actions constituting full or substantial compliance include 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.<sup>31</sup>

The additional evidence filed by the Port on June 12, 2018 to substantiate this factual claim appears to consist of the Port's 2013/2014 fiscal year budget and the declaration of Steve Escobar. The Port's 2013/2014 fiscal year budget, for the same reasons stated in Section II.C above, does not appear to contain any reference or connection to the adoption or application of optional compliance measures by the Port. Also, the declaration of Steve Escobar does not include any substantiation that adoption of the Port's 2013/2014 fiscal year budget is consistent with the application of the Port's delay of timely compliance and cost limitation provisions. The declaration simply states that at the Port Commission meeting on June 3, 2013 he "described the Renewable Portfolio Standard Program requirements to Port Commissioners."<sup>32</sup> Therefore the additional evidence filed by the Port on June 12, 2018 does not show how the 2013/2014 Port budget is consistent with the application of the Port's optional compliance measures.

**III. Based on the additional evidence filed by the Port on June 12, 2018, it does not appear the Port has complied with state law regarding the delegation of authority and open meetings.**

The Port was established pursuant to Part 4 of Division 8 of the Harbors and Navigation Code, commencing with section 6200, and is subject to the provisions of this Part. With respect to the jurisdiction and powers of the Board of Commissioners for the Port, Harbors and Navigation Code section 6270 provides in pertinent parts as follows:

The powers of a district established pursuant to this part shall be exercised by the board, by ordinance or resolution passed by a majority vote of the board. All ordinances shall be published in a newspaper of general circulation, printed or published by the county in which the district is situated, at least once before final passage.  
(Harb. & Nav. Code § 6250.)

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<sup>31</sup> TN 223100, p. 4.

<sup>32</sup> TN 223791, p. 2.

The additional evidence filed by the Port on June 12, 2018 does not show that the Port Board of Commissioners formally considered and adopted any cost limitation or delay of timely compliance rules for Compliance Period 1 of the RPS by ordinance or resolution passed by a majority of the Board.

While the Port argues that the Board of Commissioners delegated authority to the Port Director to establish and implement cost limitation and delay of timely compliance rules, the evidence filed by the Port on June 12, 2018 does not show any such delegation. Moreover, it is questionable whether the Board of Commissioners even had authority to delegate matters as significant as the establishment of optional compliance measures for the RPS to Port staff.

Under California law, the general delegation rule is that the “powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or delegated to subordinates in the absence of statutory authorization.” (*California School Employees Assn. v. Personnel Commission* (1970) 3Cal.3d 139, 144; see also *Bagley v. City of Manhattan Beach* (1976) 18 Cal.3d 22, 25.) Arguably, the adoption of optional compliance measures for the RPS - measures that may be used to excuse a POU’s RPS procurement deficits - involves the exercise of judgement or discretion that cannot be surrendered or delegated to Port staff in the absence of statutory authorization.

As discussed in Section II.D. above, the Port Board of Commissioners is subject to the public meeting requirements of the Brown Act. It is not clear from the additional evidence filed by the Port on June 12, 2018 whether the requirements of the Brown Act were satisfied by the Port Board of Commissioners in connection with any optional compliance measures that may have been considered or approved by the Board or guidance for such measures that may have been provided by the Port Board of Commissioners to Port staff.

#### **IV. Conclusion**

The Port’s additional evidence filed on June 12, 2018 does not substantiate the factual allegations from Section II of the Port Response; nor does it support the Port’s argument that it fully or substantially complied with the requirements for adoption of optional compliance measures for the RPS.

Additionally, based on the additional evidence filed by the Port on June 12, 2018, it does not appear the Port complied with state law regarding the delegation of authority and open meetings.

Staff welcomes the opportunity to provide further comments on these and other issues, as appropriate and at such time as may be directed or permitted by the Committee, including the filing of briefs supporting Staff's position that the Port's actions do not constitute full or substantial compliance with the adoption requirements of the relevant statutory and regulatory provisions for optional compliance measures as argued by the Port.

Dated this 22<sup>nd</sup> day of June, 2018.

Respectfully submitted,

CALIFORNIA ENERGY COMMISSION

*/S/ Mona Badie*

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