

DOCKETED

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Project Title:	Complaint Against the Stockton Port District re: RPS Program Compliance
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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. 18-RPS-01

NOTICE OF COMMITTEE HEARING

The Energy Commission Committee assigned to conduct proceedings on the Complaint filed by Energy Commission Executive Director Drew Bohan against the Stockton Port District alleging noncompliance with the Renewables Portfolio Standard has scheduled a Hearing as follows:

TUESDAY, SEPTEMBER 18, 2018
Beginning at 1:00 p.m.

Art Rosenfeld Hearing Room – First Floor
1516 Ninth Street
Sacramento, CA 95814
(Wheelchair Accessible)

Remote Access Available by Computer or Phone via WebEx™
(For instructions, please see the **Remote Attendance** section below.)

Background

On January 8, 2018, the Executive Director of the California Energy Commission (Energy Commission), on behalf of Energy Commission staff (Staff), filed a complaint against the Stockton Port District (Port), alleging noncompliance with the Renewables Portfolio Standard (RPS) Program for the 2011-2013 compliance period (Complaint).¹ Accompanying the Complaint was a motion to bifurcate the proceeding into two phases (Motion to Bifurcate). Specifically, Staff requested the Energy Commission consider

¹ The complaint and all other documents filed in this proceeding can be found in the docket for this proceeding at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=18-RPS-01>.

mitigating factors that may excuse the Port's alleged RPS noncompliance separate, and in advance of, Energy Commission consideration of the alleged RPS noncompliance allegations in the Complaint. On May 29, 2018, the Committee² denied the Motion to Bifurcate and directed the Port and Staff to file evidence and information relevant to the Port's claim that it either actually or substantially complied with two of the optional compliance measures identified in the Energy Commission's RPS regulations. (Cal. Code Regs., tit. 20, § 3206.) The Port filed additional evidence on June 12, 2018, and the parties filed a Joint Statement of Stipulated Facts and Remaining Contested Factual Issues on July 13, 2018 (Joint Statement). The Joint Statement indicates that the parties have not identified any remaining contested factual issues and that there is no need for evidentiary hearings to resolve factual claims.

Evidence

The Port submitted declarations on June 12, 2018; these declarations both authenticate Exhibits 1000, 1001, and 1002 and provide factual statements of the declarants relating to the Port's activities in addressing its RPS requirements. We will identify the Declaration of Chris Kiriakou as Exhibit 1003 and the Declaration of Steve Escobar as Exhibit 1004.

Staff provided a series of Exhibits with its Complaint, but these have not yet been authenticated. No later than **September 14, 2018**, Staff shall provide declarations that authenticate these documents. These declarations shall include foundation for documents included in Exhibits B, C, F, and H, such as the context, timing, and source of each document in the Exhibits. In addition, Staff shall re-docket each of the Exhibits with Bates stamps.

The Committee will enter the exhibits into evidence at the Hearing.

Oral Argument

The Hearing will include time for the parties to provide oral argument on the legal issues in the proceeding. At a minimum, the parties should address the following issues:

Substantial Compliance

1. What are the elements of the Cost Limitation and Delay of Timely Compliance options and which of those elements did the Port comply with fully and which partially?
2. What facts support those conclusions?
3. What legal standard should be used for determining whether the Port's

² The Energy Commission appointed a Committee to oversee this proceeding at its Business Meeting of February 21, 2018. The Committee consists of Karen Douglas, Commissioner and Presiding Member, and David Hochschild, Commissioner and Associate Member. (TN 222672.)

actions constitute substantial compliance? In particular, are the procedural requirements for the adoption of Optional Compliance Measures directory (rather than mandatory), rendering substantial compliance available as a defense?

4. Applying the facts in the record to the standard, explain why or why not the Port's actions meet applicable legal standards for substantial compliance.

Mitigating Factors

1. Staff and the Port agree that the three factors identified in the Complaint constitute mitigating factors. Does Staff agree that the additional factors identified by the Port in the Port of Stockton Response to Committee Response to Staff Motion to Bifurcate and Order for Additional Information, filed March 30, 2018, are mitigating factors?
2. Address the applicability of the mitigating factors identified in § 1240(d)(1) to the resolution of this Complaint.
3. On page 5 of its Complaint, staff states that the Port's efforts to meet requirements other than the Portfolio Balance and Procurement Target requirements were "reasonable." Did staff apply the same reasonableness standard to the Portfolio Balance and Procurement Target requirements?
4. Pub. Utilities Code § 399.30 does not mention mitigating or aggravating factors. The Energy Commission regulation implementing the RPS enforcement process (Cal. Code Regs., tit. 20, § 1240) allows a local publicly owned electric utility to identify mitigating factors in an answer to a complaint and the Energy Commission is directed to adopt a decision that "will include all findings, including findings regarding mitigating and aggravating factors related to noncompliance." The regulation further states that the California Air Resources Board may rely on findings regarding mitigating and aggravating in assessing a penalty against a local publicly owned electric utility pursuant to Public Utilities Code section 399.30, subdivisions (o) and (p). What is the legal authority for the parties' request that the Energy Commission rely on mitigating factors as a basis for waiving or excusing RPS noncompliance based on mitigating factors? If the Energy Commission finds that mitigating factors waive or excuse RPS non-compliance, what do the parties recommend the Energy Commission provide to ARB?

In addition, the parties will be provided with the opportunity to address other issues relevant to the proceeding. Parties will be limited to 45 minutes total for oral argument, and may allocate their time between opening and closing arguments as they choose.

Notice of Closed Session

At any time during the Hearing, the Committee may adjourn to a closed session in accordance with California Government Code section 11126, subdivision (c)(3), which allows a state body, including a delegated committee, to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

Transcripts

Parties are responsible for identifying errors in the transcripts of the proceedings. Corrections to the transcripts must be submitted to the Committee within 30 days of the filing of a transcript.

Public Participation

Members of the public are welcome to attend and offer oral or written comments at the Evidentiary Hearing and Committee Conferences. Oral comments may be limited to 3 minutes per speaker. Written comments may also be submitted electronically by visiting the website at:

<https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=18-RPS-01>.

Otherwise, written comments may be submitted by e-mailing them to docket@energy.ca.gov, or by U.S. Mail to:

California Energy Commission
Docket Unit
Docket No. 18-RPS-01
1516 Ninth Street, MS-4
Sacramento, CA 95814

For all comments, please include the Docket number “18-RPS-01” and proceeding name “Complaint Against the Stockton Port District re RPS Program Compliance” in the subject line and on the cover page.

PLEASE NOTE: Your written and oral comments, attachments, and associated contact information (e.g., your address, phone number, e-mail address, etc.) become part of the viewable public record and may become available via search engines such as Google and Yahoo.

Public Adviser and Other Energy Commission Contacts

The Energy Commission's Public Adviser's Office is available to assist the public in participating in the proceedings. For assistance, contact Alana Mathews, Public Adviser, at (916) 654-4489 or (800) 822-6228, or by e-mail at publicadviser@energy.ca.gov.

If you have a disability and need assistance to participate in the Evidentiary Hearing or Committee Conferences, contact Poneh Jones at least five days prior to the event at (916) 654-4425, or by e-mail at poneh.jones@energy.ca.gov.

Questions of a procedural nature should be directed to Caryn Holmes, Hearing Officer, at (916) 654-4178, or by e-mail at caryn.holmes@energy.ca.gov.

Media inquiries should be directed to the Media and Public Communications Office at (916) 654-4989 or by e-mail at mediaoffice@energy.ca.gov.

Remote Attendance

You may participate in these meetings through WebEx, the Energy Commission's online meeting service. Any presentations will appear on your computer screen, and you may listen to audio via your computer or telephone. Please be aware that the meeting may be recorded.

VIA COMPUTER: Go to <https://energy.webex.com> and enter the meeting number 927 709 933. When prompted, enter your name and email address. No meeting password is needed.

The "Join Conference" menu will offer you a choice of audio connections:

1. To call into the meeting: Select "I will call in" and follow the on-screen directions.
2. International Attendees: Click on the "Global call-in number" link.
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International callers may select their number from:

<https://energy.webex.com/energy/globalcallin.php>

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Muting

We greatly appreciate your cooperation in reducing noise on the audio connection by muting your line when you are not speaking. Mute your line rather than placing your phone on hold. Using WebEx, you may mute yourself by right clicking on your name in the panelists or attendees list and selecting "Mute." If you are only using a telephone connection, press "*6" once to mute and again to unmute.

Dated: September 7, 2018, at Sacramento, California

Original Signed by:

KAREN DOUGLAS

Commissioner and Presiding Member

Complaint Against Stockton Port District for Noncompliance with the Renewable for Noncompliance with the Renewable Portfolio Standard Committee Portfolio Standard Committee

Original Signed by:

DAVID HOCHSCHILD

Commissioner and Associate Member

Complaint Against Stockton Port District for Noncompliance with the Renewable for Noncompliance with the Renewable Portfolio Standard Committee Portfolio Standard Committee

**Complaint Against Stockton Port District For
Noncompliance with the Renewables Portfolio Standard
(18-RPS-01)**

**Hearing Agenda
Tuesday, September 18, 2018**

1:00 p.m.

**California Energy Commission
Art Rosenfeld Hearing Room – First Floor
1516 Ninth Street
Sacramento, CA 95814**

1. Call to Order
2. Preliminary Matters
3. Receipt of Evidence
4. Oral Argument
5. Public Comment

Members of the public and other interested persons and entities may speak up to three minutes on a matter related to this proceeding.

6. Closed Session (if necessary)³
Committee closed session consideration of the following items:

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

7. Adjourn.
8. Agency Contact: Caryn Holmes, Hearing Officer, phone: (916) 654-4178, or e-mail at caryn.holmes@energy.ca.gov.

³ The Committee may adjourn to closed session in accordance with Government Code section 11126, subdivision (c)(3), which allows a state body, including a delegated committee, to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.