

DOCKETED	
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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 MOTION FOR OFFICIAL NOTICE OF CALIFORNIA ENERGY
COMMISSION RPS RULEMAKING DOCUMENTS**

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Dated: October 31, 2018

**STAFF MOTION FOR OFFICIAL NOTICE OF CALIFORNIA ENERGY
COMMISSION RPS RULEMAKING DOCUMENTS**

INTRODUCTION AND SUMMARY

Pursuant to Government Code sections 11513(c) and 11515, California Energy Commission staff (“Staff”) hereby moves for the Committee to take official notice of the following rulemaking documents in the matter of the Complaint against Stockton Port District for Noncompliance with the Renewables Portfolio Standard:

- (1) The document entitled *Initial Statement of Reasons for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, docketed as TN 225679 in the subject proceeding and TN 69822 in the Energy Commission’s rulemaking proceeding for the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, 13-RPS-01, as a true and correct copy of the Initial Statement of Reasons that was prepared by the Commission in its rulemaking proceeding.¹
- (2) The document entitled *Final Statement of Reasons for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, docketed as TN 225680 in the subject proceeding and TN 71960 in the Energy Commission’s rulemaking proceeding for the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, 13-RPS-01, as a true and correct copy of the Final Statement of Reasons that was prepared by the Commission in its rulemaking proceeding.²
- (3) The document entitled *State of California Office of Administrative Law* and captioned *In re California Energy Commission, Notice of Approval of Regulatory Action*, docketed as TN 225545 in the subject proceeding and TN 71948 in the Energy Commission’s rulemaking proceeding for the *Enforcement Procedures for the Renewables Portfolio*

¹ TN 225679 reflects the re-docketed Initial Statement of Reasons (“ISOR”). The ISOR was re-docketed in the subject proceeding to reflect the TN number and docketing in the RPS rulemaking proceeding, 13-RPS-01.

² TN 225680 reflects the re-docketed Final Statement of Reasons (“FSOR”). The FSOR was re-docketed in the subject proceeding to reflect the TN number and docketing in the RPS rulemaking proceeding, 13-RPS-01.

approving the Commission's regulations establishing *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*.

ARGUMENT

Section 1212(b)(1)(C) of Energy Commission regulations governing adjudicative proceedings provides that the hearing record for a proceeding shall contain “any materials or facts officially noticed.”³ And section 1212(c)(2) of Energy Commission regulations provides that for Energy Commission adjudicative proceedings a “finding may be based on any evidence in the hearing record, if the evidence is the sort of information on which responsible persons are accustomed to relying on in the conduct of serious affairs.”⁴

Government Code provisions governing formal hearings for administrative adjudication provide that a “hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided” and “[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.”⁵ Additionally, these provisions specify that “[i]n reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State.”⁶

Evidence Code section 452 allows courts to take judicial notice of regulations and legislative enactments issued by a public entity and official acts of state legislative, executive, and judicial departments.⁷

In the subject proceeding the Port is arguing that certain Energy Commission regulatory requirements regarding Renewables Portfolio Standard (RPS) optional compliance measures are not applicable. Therefore, it is relevant and appropriate for Staff to rebut this claim with

³ 20 CCR § 1212 subd. (b)(1)(C).

⁴ 20 CCR § 1212 subd. (c)(2).

⁵ Gov. Code § 11513(c).

⁶ Gov. Code § 11515.

⁷ Evid. Code § 452 subds. (b) and (c). See *Rodas v. Spiegel* (2001), 87 Cal.App.4th 513, 518 (official acts under Evid. Code section 452(c) include records, reports and orders of state administrative agencies) and *As You Sow v. Conbraco Industries* (2006), 135 Cal.App.4th 431, 438 (taking judicial notice of administrative rulemaking documents, including an initial statement of reasons).

evidence from the Energy Commission’s RPS rulemaking proceeding, 13-RPS-01, showing that the regulations were adopted pursuant to, and in consideration of, statutory authority. Staff would like to introduce evidence from the Energy Commission rulemaking proceeding, 13-RPS-01, wherein the Energy Commission considered its authority to adopt regulations, including regulations specifically addressing local publicly owned electric utility (“POU”) application of optional compliance measures to excuse noncompliance with RPS procurement requirements. This evidence is docketed in the Energy Commission’s formal rulemaking proceeding, 13-RPS-01, and is not in dispute.

CONCLUSION

Based on the facts and authorities set forth above, it is respectfully requested that the Committee grant Staff’s Motion for Official Notice of California Energy Commission RPS Rulemaking Documents as described above and as described in the proposed order attached.

Dated this 31st day of October 2018.

Respectfully submitted,
CALIFORNIA ENERGY COMMISSION

/S/ Mona Badie

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/S/ Gabriel Herrera

Gabriel Herrera

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DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of:

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[PROPOSED]

**ORDER GRANTING ENERGY COMMISSION STAFF MOTION
FOR OFFICIAL NOTICE**

Pursuant to California Code of Regulations, title 20, sections 1203(c), 1212(b), and 1212(c) the Committee issues the following Order approving the Staff Motion for Official Notice of California Energy Commission RPS Rulemaking Documents (“Staff Motion”).

Background

On October 31, 2018 Staff filed a motion requesting official notice of certain California Energy Commission (“Commission”) Renewables Portfolio Standard (RPS) rulemaking documents which were docketed in the original rulemaking proceeding, 13-RPS-01, and have also been docketed by Staff in the subject proceeding, 18-RPS-01.

The Staff Motion request the Committee to take official notice of the following rulemaking documents in the matter of the Complaint against Stockton Port District for Noncompliance with the Renewables Portfolio Standard:

- (1) The document entitled *Initial Statement of Reasons for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, docketed as TN 225679 in the subject proceeding and TN 69822 in the Energy Commission’s rulemaking proceeding for the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, 13-RPS-01, as a true and correct copy of the Initial Statement of Reasons that was prepared by the Commission in its rulemaking proceeding.
- (2) The document entitled *Final Statement of Reasons for Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, docketed as TN 225680 in the subject proceeding and TN 71960 in the Energy Commission’s rulemaking proceeding for the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, 13-RPS-01, as a true and correct

copy of the Initial Statement of Reasons that was prepared by the Commission in its rulemaking proceeding.

- (3) The document entitled *State of California Office of Administrative Law* and captioned *In re California Energy Commission, Notice of Approval of Regulatory Action*, docketed as TN 225545 in the subject proceeding and TN 71948 in the Energy Commission's rulemaking proceeding for the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*, 13-RPS-01, as a true and correct copy of the notice issued by the State of California Office of Administrative Law approving the Commission's regulations establishing *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*.

Order Granting Staff Motion

Pursuant to California Code of Regulations, title 20, sections 1203(c), 1212(b), and 1212(c) the Staff Motion is hereby granted by the Committee.

So Ordered.

Dated: _____, at Sacramento, California

KAREN DOUGLAS
Commissioner and Presiding Member
Complaint Against Stockton Port District

DAVID HOCHSCHILD
Commissioner and Associate Member
Complaint Against Stockton Port District