



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Continue )  
Implementation and Administration, and Consider )  
Further Development, of California Renewables )  
Portfolio Standard Program. )  
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Rulemaking 18-07-003  
(Filed July 23, 2018)

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION COMMENTS ON  
ASSIGNED COMMISSIONER'S RULING REQUESTING COMMENTS ON  
STAFF PROPOSAL TO CLARIFY AND IMPROVE CONFIDENTIALITY RULES FOR  
THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

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March 30, 2020

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In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”) and the *Assigned Commissioner’s Ruling Requesting Comments on Staff Proposal to Clarify and Improve Confidentiality Rules for the Renewables Portfolio Standard Program*, issued on February 27, 2020 (“ALJ Ruling”), the California Community Choice Association (“CalCCA”)<sup>1</sup> respectfully submits these comments.

**I. INTRODUCTION AND SUMMARY**

As local governmental entities, California’s community choice aggregators (“CCAs”) operate in an open and transparent manner, subject to both the Public Records Act<sup>2</sup> and the Ralph

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<sup>1</sup> California Community Choice Association represents the interests of 19 community choice electricity providers in California: Apple Valley Choice Energy, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Monterey Bay Community Power, Peninsula Clean Energy, Pioneer Community Energy, Pico Rivera Innovative Municipal Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Jacinto Power, San Jose Clean Energy, Silicon Valley Clean Energy, Solana Energy Alliance, Sonoma Clean Power, and Valley Clean Energy.

<sup>2</sup> Cal. Gov. Code, §§ 6250, *et seq.*

M. Brown Act.<sup>3</sup> CCAs are committed to the goal of transparency and to ensuring that the public has reasonable access to data on all load serving entities’ (“LSEs”) procurement of renewable energy.

CalCCA generally supports the proposed changes to the Commission’s confidentiality rules presented in the Energy Division staff proposal (“Staff Proposal”) because these proposals significantly increase the amount of information that will be treated as public, while taking reasonable measures to ensure that no one class of market participant is disadvantaged by these changes. CalCCA requests, however, that the Commission contemporaneously grant CalCCA’s pending petition for modification<sup>4</sup> seeking to align protection of confidential CCA data with the protection of confidential data for other load-serving entities. Additionally, as further described below, CalCCA proposes modifying Staff Proposal E.4 such that for contracts falling into that category, contract price would be publicly available one year after the contract is executed. This modification would still greatly expand the pricing data that is publicly available, while providing adequate protection for LSE-sensitive pricing information.

## **II. COMMENTS ON THE ALJ RULING**

### **A. CalCCA’s Petition for Modification**

CalCCA’s PFM requests that D.06-06-066 be modified to clarify that the confidentiality protections of that decision apply to CCAs and to include a new CCA matrix as Appendix 2A to that decision.<sup>5</sup> CalCCA’s proposed new CCA Matrix would be identical to the existing matrix applicable to Electric Service Providers (“ESPs”).

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<sup>3</sup> Cal. Gov. Code §§ 54950, *et seq.*

<sup>4</sup> Petition for Modification (“PFM”) of (“D.”) D.06-06-066 as amended by D.07-05-032, D.06-12-030, and D.08-04-023, Jan. 21, 2020.

<sup>5</sup> PFM at 7.

As the Commission evaluates any proposals to modify the confidentiality rules applicable to the Renewables Portfolio Standard (“RPS”) Program in this Rulemaking, the Commission should be mindful of the impacts to other proceedings dealing with these confidentiality issues more broadly, including CalCCA’s PFM. The Staff Proposal treats CCA and ESP data the same, which presumes that in other contexts these data are treated similarly. The Commission has not yet confirmed, however, that CCA and ESP data receive similar treatment in all circumstances under D.06-06-066. Granting CalCCA’s PFM thus is foundational to the adoption of the Staff Proposal. For this reason, CalCCA requests that the Commission grant the PFM contemporaneously with the adoption of the Staff Proposal in this proceeding.

### **B. Responses to the Staff Proposal**

CalCCA agrees with the five guiding principles provided in the Staff Proposal, and in particular, the principle that the Commission’s confidentiality rules should ensure that ratepayers have access to the information that is necessary to understand how each investor-owned utility (“IOU”), ESP, and CCA is meeting its RPS obligations.<sup>6</sup> The goal of maximizing the transparency of RPS procurement information must be balanced against the need to protect market-sensitive information that could unintentionally put one entity at a disadvantage, particularly where the likely outcome is increased procurement costs that could be passed on to ratepayers. While the Staff Proposal would substantially increase the amount of RPS procurement information that is public, it generally succeeds in achieving this balance by ensuring that limitations on confidentiality apply equally across the IOUs, ESPs, and CCAs. Where there are different processes for the review and approval of certain IOU contracts or solicitation data, the Staff Proposal makes appropriate distinctions in a manner that ensures

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<sup>6</sup> ALJ Ruling at A-1.

reasonably comparable treatment in light of the Commission's different role regarding RPS procurement for ESPs and CCAs.

CalCCA specifically supports the Staff Proposal's goal of reducing the number of years that a retail seller's forecast of its retail sales and net short position will be treated as confidential. Also, subject to the proposed modification below, CalCCA supports the Staff Proposal's goal of significantly reducing the period of time where contract price data can remain confidential. Both of these changes will promote the public interest and have the potential to reduce the costs of RPS procurement. Providing greater transparency of the future procurement needs of all retail sellers will improve both statewide and individual entity procurement planning activities. Providing greater access to market-wide pricing data should have the effect of pushing procurement prices down, or at least providing additional data to more effectively inform decisions on procurement prices. As long as these changes are applied consistently across the retail sellers, these changes have the potential to provide significant benefits.

In the following sections, CalCCA provides additional responses to three of the Staff Proposal's recommendations:

1. Staff Proposal D.1

CalCCA supports Staff Proposal D.1, which clarifies that the confidentiality treatment of information from compliance reports should be treated the same for IOUs, ESPs, and CCAs. This clarification is consistent with the existing D.06-06-066 rules and with the proposed CCA Matrix included in CalCCA's PFM.

2. Staff Proposal E.4

Staff Proposal E.4 would change the Commission's confidentiality rules so that, for RPS contracts that do not require Commission approval, the contract price would be publicly

available the sooner of six months after contract approval or thirty days after energy deliveries start.<sup>7</sup> As stated above, CalCCA generally supports the goal of this proposal and how staff has structured this new rule. However, six months from the date of contract execution does not provide adequate protection of LSE-sensitive information and could significantly disadvantage certain LSEs.

For example, an LSE may issue a solicitation for renewable procurement where multiple bids may be accepted and where the solicitation remains open for a period of time longer than six months. If an LSE entered into contract negotiations with two separate counterparties that both responded to a single solicitation and the pricing information from one of those contracts was made public while that LSE was still in negotiations with the other counterparty, then that LSE would be at a significant contracting disadvantage. The counterparty would not only know the LSE's needs based on the solicitation, but would also know the price that the LSE had agreed to in response to that solicitation. Such disclosure has the potential to increase the contract price that the parties would ultimately agree to for that remaining contract or otherwise affect non-price terms and conditions that are indirectly reflected in the price. This scenario is particularly likely to occur for those LSEs that will be engaged in significant renewable procurement over the coming years. Extending the timeframe for making pricing information publicly-available from six months to one year after contract execution would reduce this risk because in most cases the solicitation would have closed and/or contract negotiations would have concluded.

Additionally, in power purchase agreements, the contract price is only one element of a complex set of terms that are negotiated between an LSE and a project developer. Certain LSEs may be willing to pay a higher price in exchange for certain non-price terms and conditions that

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<sup>7</sup> ALJ Ruling at A-13, A-14.

benefit the LSE and its customers or otherwise promote goals consistent with the LSE's overall mission. These additional non-price terms can be both risk-related terms and LSE-related.

Risk-related terms include elements of the agreement such as the allocation of risk, credit posting requirements, protections against project delay, requirements of guaranteed levels of production, and other similar terms that affect the value of the agreement. An agreement with a higher price may actually provide greater value than a separate agreement with a lower price because of the economic impact of these other contract terms. Similarly, LSE-related terms may influence the price. Specific projects may be more valuable to certain LSEs because the project meets specific policy goals adopted by its governing board. This could include providing local economic benefits by siting a project within an LSE's service territory, meeting certain targets for resource diversification, or complying with local RPS goals that exceed state minimums.

Making just pricing information publicly-available six months after contract execution runs a higher risk of misinforming the public and market participants because these agreements would potentially be evaluated prematurely on pricing alone, without regard to risk and LSE-specific non-price terms and conditions. This higher risk is not counter-balanced by benefits that could not equally be achieved by providing the pricing information slightly later in time. Modifying the proposal as CalCCA recommends would allow additional time for an LSE to present a more a complete and comprehensive picture of its procurement activities based on additional contracts that may have been executed and reporting that may have occurred during that time period.

To address these issues, CalCCA recommends that the Commission modify this proposal to provide a different timeline for making contract price information publicly-available. Specifically, for RPS contracts that do not require Commission approval, the contract price

would be publicly available one year after contract execution. This modification would still greatly expand the public availability of contract price information, while providing necessary protections for LSEs.

### 3. Staff Proposal F.8

Staff Proposal F.8 would clarify that a list of specific contract terms, not including contract price as previously discussed, would be publicly available thirty days after deliveries under the contract commence.<sup>8</sup> While CalCCA does not object to this proposal, CalCCA recommends additional discussion on how to implement this change. CCAs currently submit all of their RPS contracts to Energy Division staff as part of the CCAs' respective annual RPS Compliance Report filings. Energy Division should clarify what procedure staff will use to make just the items listed in Staff Proposal F.8 public, if such information is requested after the 30-day time period has elapsed. Energy Division should also clarify what steps Staff will take to ensure that contract terms that are not listed in Staff Proposal F.8 will be kept confidential, even when otherwise public elements of a contract are requested.

### III. CONCLUSION

CalCCA appreciates the opportunity to provide these comments to the Commission.

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Respectfully submitted,

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<sup>8</sup> ALJ Ruling at 21.