



**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 REPLY 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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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 (“ACR”), the California Community Choice Association (“CalCCA”)¹ respectfully submits these reply comments.

I. INTRODUCTION

On March 30, 2020, the parties in this proceeding filed thirteen sets of opening comments on the Energy Division’s Staff Proposal (“Staff Proposal”).² A significant number of opening

¹ 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.

² The following parties filed opening informal comments on March 30, 2020: the Alliance for Retail Energy Markets (“AReM”) and Direct Access Customer Coalition (“DACC”) (collectively

comments urge the Commission to simply reject the Staff Proposal and take no further action to reassess the existing confidentiality rules that apply to the renewables portfolio standard (“RPS”) program. As CalCCA described in its opening comments, community choice aggregators (“CCAs”) are public agencies that are committed to operating in an open and transparent manner and to ensuring that the public has reasonable access to data on all load serving entities’ (“LSEs”) procurement of renewable energy.³

Therefore, CalCCA supports Energy Division staff’s effort to reevaluate the Commission’s current confidentiality rules to determine if the public can be provided with greater access to RPS procurement information, while still adequately protecting market sensitive information and ensuring that no one class of market participant is disadvantaged. Based on CalCCA’s initial assessment, CalCCA believes that making the pricing information from non-Commission approved contracts publicly available one year after execution, and making conforming changes to all Commission-approved contracts, would strike this balance between expanding transparency and protecting sensitive information.

“AReM/DACC Comments”); Southern California Edison Company (“SCE”), Pacific Gas and Electric Company (“PG&E”), and San Diego Gas & Electric Company (“SDG&E”) (collectively, the “Joint IOUs”); Shell Energy North America (US), L.P. (“Shell Energy”); Bear Valley Electric Service (“BVES”), a division of Golden State Water Company, Liberty Utilities (CalPeco Electric) LLC (“Liberty CalPeco”), and PacifiCorp, d.b.a. Pacific Power (“PacifiCorp”) (collectively, the California Association of Small and Multi-Jurisdictional Utilities (“CASMU”)); the Public Advocates Office at the California Public Utilities Commission (“Cal Advocates”); The Utility Reform Network (“TURN”); Independent Energy Producers Association (“IEP”); The American Wind Energy Association of California (“AWEA-California”); Western Power Trading Forum (“WPTF”), California Energy Storage Alliance (“CESA”); Shell Energy North America (US), L.P.; the Solar Energy Industries Association (“SEIA”) and the Large-scale Solar Association (“LSA”) (collectively (“SEIA/LSA”); Defenders of Wildlife; California Community Choice Association; and Green Power Institute (“GPI”)

³ CalCCA Opening Comments at 2.

II. REPLY COMMENTS

A. CalCCA Supports a Robust Regulatory Process to Evaluate the Staff Proposal.

In opening comments, several parties raised concerns with the Staff Proposal, asserting that the evidentiary record in this rulemaking is inadequate to justify the changes that staff proposes.⁴ These parties reference the extensive regulatory process that led to the adoption of Decision (“D”) 06-06-066 as support for the argument that these rules should not be revisited.⁵

CalCCA does not believe that either the ACR or the Staff Proposal suggest that there would not be a robust regulatory process or that the next step could be a proposed decision approving these proposals. The ACR expressly contemplates a multi-step process, acknowledging that these confidentiality issues are complex and affect a variety of market participants.⁶ The ACR clearly indicates that this is the beginning of the regulatory process, and notes that it does not even propose a specific mechanism or procedural vehicle for adopting and implementing the Staff Proposal.⁷

The mere fact that the regulatory process for D.06-06-066 was robust does not mean that these issues cannot or should not be revisited. That process occurred fifteen years ago and the renewable industry and the RPS program have been significantly transformed since that time. Regardless of how extensive that prior process was, it is not inappropriate for the Commission to determine if the analysis that was part of D.06-06-066 would produce different results today based on the changed factual circumstances. Particularly here, where the question is what time

⁴ See, e.g. Joint IOU Comments at 28; Cal Advocates at 5-7.

⁵ Joint IOU Comments at 28.

⁶ ACR at 5.

⁷ *Id.*

periods of confidentiality are necessary to protect information that should genuinely be provided confidential treatment. This is the beginning of this process and CalCCA supports a robust evaluation of the factual and legal issues that are presented in the Staff Proposal.

B. There are Several Potential Benefits to Increasing Transparency of RPS Pricing and Forecast Information.

Several parties raised doubts as to whether the increased transparency that would be provided by the changes in the Staff Proposal would provide any benefits, particularly as it would directly impact ratepayers. CalCCA believes that there are several potential areas where the Staff Proposal's increase in transparency would provide benefits.

1. The Commission's Rules Should Provide for the Maximum Amount of Transparency That is Possible Without Disclosing Information That is Truly Market Sensitive.

California has a strong policy of favoring transparency and, for RPS Procurement in particular, Senate Bill ("SB") 1488 (stats. 2004) requires that the Commission reconcile its obligation to protect the confidentiality of market sensitive information with its requirement to provide for meaningful public participation and open decision-making. There is independent value in ensuring that the public has full access to information about how the LSEs in the state are progressing toward meeting the RPS Program requirements without having to be a direct participant in the Commission's proceeding or the specific process for non-market participants to gain access to this information. The Staff Proposal provides a benefit by increasing or, at the very least, re-evaluating the amount of information that will be readily available to inform the public.

2. *Increased Pricing Transparency May Result in Reduced Ratepayer Costs.*

In opening comments, several parties assert that greater price transparency will increase costs to ratepayers.⁸ To support this conclusion, these parties cite to the analysis that was performed to support D.06-06-066.⁹ CalCCA believes that significant changes may have occurred in the renewable marketplace, which therefore justify revisiting this economic analysis in order to determine if these conclusions are still valid. It may be true that broad access to recent and more varied pricing information will have the effect of reducing contract prices *market wide* and thus result in reduced costs to ratepayers. However, an updated analysis must also consider whether disclosure would result in economic harm to individual LSEs.

C. The Commission Should Evaluate Arguments on the Potential Harms of Increasing Pricing Transparency.

Several parties provided examples of potential harms that could result from the premature release of forecast or pricing information. As part of the process of developing an adequate record to support a Commission decision on any changes to these confidentiality rules, the Commission should carefully evaluate these harms and determine if further modification of the Staff Proposal or other protections are necessary to protect against these harms. For example, the Joint IOU Comments assert that the premature release of pricing information will create a price target that will lead sellers to set prices that are unreasonably high or artificially low.¹⁰ The Joint IOUs argue that high contract prices will harm ratepayers because these costs will be

⁸ See e.g., Joint IOU Comments at 34-35

⁹ *Id.* at 35.

¹⁰ *Id.* at 20.

passed into rates.¹¹ The Joint IOUs also argue that sellers could use a public price target to bid an artificially low contract price in order to secure contract execution and Commission approval, but then at a later time, seek to amend the contract to increase the price.¹²

CalCCA recognizes these potential risks and urges the Commission to work with the parties in this proceeding to fully and comprehensively analyze the potential harms that could result from the earlier release of contract pricing information. If this analysis demonstrates that a particular time period for confidential protection is inadequate to address these harms, then the parties should evaluate whether any extension of the period for confidentiality protection would mitigate these identified harms.

Additionally, in evaluating the potential harms associated with the earlier release of contract pricing information, it is important to note that the Staff Proposal would not result in the release of a just one LSE's pricing information, but all LSEs' pricing information. Under this changed structure, all market participants would have access to a much greater number of recent contract prices and presumably no single market participant would be uniquely disadvantaged. Rather than only evaluating the impacts as it would apply in a single instance, the Commission should evaluate the mitigating effect that this broader change to the market would have.

Finally, it is possible that broader access to pricing information could actually reduce the risk that was identified by the Joint IOUs of a seller artificially reducing its bid price with the intent to renegotiate a higher price at a later date. Greater access to more current pricing information could make a buyer more able to determine that a seller's proposed contract price is so low that is an unreasonable outlier, and should raise questions about the project's viability.

¹¹ *Id.* at 22.

¹² *Id.*

Further, if the investor-owned utilities' ("IOUs'") contracts do not adequately disincentivize a seller from artificially lowering its bid price with the intent of seeking amendment at a later date, the Commission should consider changes to the IOUs' contracts or bid process to reduce this risk.

D. The Commission is Not Prohibited From Reevaluating its Implementation of SB 1488 in D.06-06-066.

Several Parties assert that the Commission cannot make changes to the time periods specified in the IOU or Electric Service Provider ("ESP") Matrices of D.06-06-066 without violating Public Utilities Code section 454.5(g) and Government Code section 6254(k).¹³ However, D.06-06-066, as amended by D.07-06-032, does not find that the time periods specified in the IOU and ESP matrices are the absolute minimum that must be imposed to avoid violating Public Utilities Code section 454.5(g) and Government Code section 6254(k). Instead, those time periods were selected based on the analysis and party input that was provided at that time. To the extent that factual assumptions have changed or that the applicable regulatory program has been modified, it is reasonable for the Commission to reevaluate these time periods.

For example, D.06-06-066 found that an LSE's net short position should be confidential for three years because this time period prevents market manipulation because three years is the minimum amount of time that it will take new generation to come online.¹⁴ Reevaluating this factual assertion based on the substantial amount of additional renewable generation that has been constructed since 2006 is reasonable. Similarly, this assertion should also be reevaluated in light of the change from an *annual* RPS structure to *multi-year* compliance periods. Such an

¹³ See, e.g., Joint IOUs Comments at 7; AReM/DACC Comments at 7.

¹⁴ D.06-06-066 at 35.

evaluation does not necessarily result in a violation of Public Utilities Code section 454.5(g) or Government Code section 6254(k).

CalCCA recommends that the Commission provide procedural opportunities for the parties to identify what modifications or extensions to the confidentiality protection rules would be necessary to maximize transparency while still meeting the balancing of interests that is contemplated by SB 1488, Public Utilities Code section 454.5(g), or Government Code section 6254(k).

E. CalCCA Does Not Object to TURN's Proposed Change to the Time Period Specified in Section F.8, Subject to the Modification Proposed in CalCCA's Opening Comments.

TURN recommends that the Commission should align the confidentiality protections for contract pricing information with the other contract provisions specified in Section F.8, such that for both, the confidentiality protection would end the sooner of 30 days after deliveries start or six months after contract execution.¹⁵ In CalCCA's Opening Comments, CalCCA proposed modifying the Staff Proposal such that contract price information for non-Commission approved contracts would be publicly available one year after contract execution.¹⁶ CalCCA does not object to TURN's proposal to align the confidentiality protections for pricing information and the protections for the contract provisions in Section F.8, if modified to be consistent with CalCCA's proposal. Therefore, as modified, both pricing information and the contract provisions specified in Section F.8 would be publicly available one year after contract execution, or the length of confidentiality protection that the Commission ultimately adopts.

¹⁵ TURN Comments at 2.

¹⁶ CalCCA Comments at 6-7.

F. CalCCA Recommends Rejecting TURN’s Proposal to Require LSEs to Proactively Disclose Contract Information on the Date that the Confidentiality Protection Expires.

TURN proposes requiring ESPs and CCAs to affirmatively file and serve contract information on the date that the confidentiality protection expires.¹⁷ TURN raises concerns that an ESP or CCA could delay execution of a contract in order to extend confidentiality protections. CalCCA is concerned that this proposal is administratively burdensome and would expose CCAs and ESPs to potential noncompliance due to the repeated filing requirements. CalCCA recommends that the Commission reject this proposal.

III. CONCLUSION

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

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Respectfully submitted,

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¹⁷ TURN Comments at 3.