

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



**FILED**

10/06/21  
04:59 PM

Order Instituting Rulemaking To Continue  
Implementation and Administration, and  
Consider Further Development, of California  
Renewables Portfolio Standard Program.

R.18-07-003

**OPENING COMMENTS OF THE CALIFORNIA COMMUNITY CHOICE  
ASSOCIATION ON THE PROPOSED DECISION AND ALTERNATE PROPOSED  
DECISION CLARIFYING AND IMPROVING CONFIDENTIALITY RULES FOR THE  
RENEWABLES PORTFOLIO STANDARD PROGRAM**

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On behalf of California Community Choice  
Association

October 6, 2021

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## SUMMARY OF RECOMMENDATIONS

- Adopt the PD as it ensures expanded public access to RPS procurement information while sufficiently protecting market-sensitive information and not disadvantaging any one market participant over another;
  - Reject the APD as the six-month confidentiality protection for contract pricing beginning from the date of contract execution or approval fails to adequately protect market-sensitive information and disadvantages CCAs as compared to IOUs; and
  - Modify Ordering Paragraph 3 of the PD/APD to clarify that a contract amendment does not reduce the otherwise applicable confidentiality window for contract price information.
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RENEWABLES PORTFOLIO STANDARD PROGRAM**

The California Community Choice Association (CalCCA)<sup>1</sup> respectfully submits these comments pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, on Administrative Law Judges Manisha Lakhanpal and Carolyn Sisto’s proposed *Decision Clarifying and Improving Confidentiality Rules for the Renewables Portfolio Standard Program* (PD), issued on September 16, 2021, and Commissioner Clifford Rechtschaffen’s alternate proposed *Decision Clarifying and Improving Confidentiality Rules for the Renewables Portfolio Standard Program* (APD), issued on September 16, 2021.

**I. INTRODUCTION AND SUMMARY**

As local governmental agencies, California’s community choice aggregators (CCAs) are committed to operating in an open and transparent manner, and ensuring that the public has

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<sup>1</sup> California Community Choice Association represents the interests of 22 community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

reasonable access to data on the procurement of renewable energy by California's load serving entities (LSEs). As set forth below, CalCCA supports the PD as it would both expand the types of renewables portfolio standard (RPS) procurement information that the public has access to as well as shorten the current timeframes for confidential treatment of RPS procurement information. The PD achieves these goals while also sufficiently protecting market-sensitive information and not disadvantaging any one class of market participant over another. The APD, however, should be rejected as its proposed six-month confidentiality protection for contract pricing fails to adequately protect market sensitive information, and disadvantages CCAs as compared to investor-owned utilities (IOUs) given that the effect of the proposal is that IOUs would get a longer period of confidentiality protection than CCAs. Additionally, CalCCA identifies one recommended clarification to the PD and APD regarding the confidentiality treatment associated with contract amendments.

CalCCA therefore provides the following recommendations:

- Adopt the PD as it ensures expanded public access to RPS procurement information while sufficiently protecting market-sensitive information and not disadvantaging any one market participant over another;
- Reject the APD as the six-month confidentiality protection for contract pricing beginning from the date of contract execution or approval fails to adequately protect market-sensitive information and disadvantages CCAs as compared to IOUs; and
- Modify Ordering Paragraph (OP) 3 of the PD/APD to clarify that a contract amendment does not reduce the otherwise applicable confidentiality window for contract price information.

## **II. THE COMMISSION SHOULD ADOPT THE PROPOSED DECISION**

The PD should be adopted, as it appropriately balances the substantial public interest in RPS program information with the need to protect market-sensitive RPS procurement data to allow all classes of market participants to conduct their procurements competitively and fairly.

The expansion of the types of RPS procurement information that the public will be able to access, as well as the shortening of the current timeframes for confidential treatment of RPS procurement information, are appropriate given evolving market conditions, including the shortened timeframe for renewable projects to come online. CalCCA supports the PD's: (1) approach to assessing the confidentiality protections for RPS procurement data; (2) reduction of the window of confidentiality for RPS compliance forecast data and RPS net short positions from three years to two years; and (3) proposal to make a contract price publicly disclosable the sooner of 30 days after commercial online date (COD) or three years after contract approval or execution. Accordingly, CalCCA requests that the Commission adopt the PD.

**A. CalCCA Supports the PD's Approach to Assessing the Appropriate Confidentiality Protections for Renewable Procurement Data**

CalCCA agrees with the PD's approach to analyzing the extent of confidentiality protection that should be provided to each type of RPS information. Specifically, CalCCA agrees that the Commission should "start with presumptions that information should be publicly disclosed, Decision (D.) 06-06-066 intended to grant greater access to the RPS data, and that any party seeking confidentiality bears a strong burden of proof."<sup>2</sup> The PD recognizes that in performing this analysis there is value in ensuring that the public has adequate access to information on renewable procurement by LSEs and on the status of individual LSEs in meeting the RPS program requirements.

**B. The Commission Should Adopt the PD's Reduction of the Window of Confidentiality for RPS Compliance Forecast Data and RPS Net Short Positions from Three Years to Two Years**

CalCCA supports the PD's reduction of the confidentiality period for energy and capacity forecast data and RPS net short positions from three years into the future down to two years into

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<sup>2</sup> PD at 20.

the future. The PD rightly concludes that D.06-06-066's primary justification for providing three years of protection to forecast capacity and energy data was that three years was the typical amount of time that it takes a project to come online after contract execution.<sup>3</sup>

In its reply comments on 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), CalCCA urged the Commission to reevaluate this determination based on the data that the Commission has access to regarding the average time from contract execution to the COD.<sup>4</sup> The PD provides a thorough and detailed analysis on this issue, finding that this time period has fallen significantly since 2006, and thus the key assumption on which this confidentiality rule was based has changed. CalCCA agrees that, in light of these changed facts, the Commission is justified in reducing the confidentiality window for this forecast data.

**C. The Commission Should Adopt the PD's Proposal to Make Contract Price Publicly Disclosable the Sooner of 30 Days after COD or Three Years after Contract Approval or Execution**

As CalCCA stated in opening comments on the ALJ Ruling, one year of confidentiality protection for contract price data would largely prevent other bidders from gaining access to this sensitive pricing information during ongoing negotiations that resulted from the same solicitation.<sup>5</sup> Based on factual support, the PD finds that there is a need for this protection,

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<sup>3</sup> PD at 31-32.

<sup>4</sup> *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* (April 17, 2020), Rulemaking (R.) 18-07-003 at 7.

<sup>5</sup> *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* (May 30, 2020) (CalCCA Comments on ALJ Ruling), R.18-07-003, at 4. CalCCA stated:

noting that “making RPS prices public 30 days after the commercial operation date . . . will avoid market manipulations and protect ratepayers from higher costs.”<sup>6</sup> More specifically, the PD finds that a window of confidentiality protection that is at least one year in duration from contract execution is “*long enough to let all contract negotiations close*, guarantees a period when bid prices remain confidential from contemporaneous bids, adds certainty to the market, and is non-discriminatory.”<sup>7</sup> CalCCA concurs that there is strong factual support for the PD’s conclusion.

While there is a potential difference in the timing for releasing this information for IOU contracts as compared to CCA and Electric Service Provider (ESP) contracts, this difference is minor because most projects come online within three years of contract execution. For the large majority of contracts with new facilities, the window of confidentiality protection for contract pricing information will be the same for IOUs, CCAs, and ESPs. Therefore, CCAs are not uniquely disadvantaged as compared to IOUs.

As a result of the above, CalCCA recommends that the Commission adopt the PD.

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[A]n 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.

*Id.*

<sup>6</sup> PD at 42.

<sup>7</sup> PD at 42-43 (emphasis added).

### **III. THE COMMISSION SHOULD REJECT THE APD**

The Commission should reject the APD as it errs in providing only six months of confidentiality protection for contract pricing from the date of either contract execution or contract approval, as applicable. As demonstrated in the record, this proposed timeline does not provide adequate protection to keep market-sensitive information from being disclosed during ongoing negotiations, which could result in harm to end-use electricity customers. Moreover, the structure of this proposal would significantly disadvantage CCAs as compared to IOUs. The Commission should therefore reject the APD, and instead adopt the PD's contract pricing confidentiality proposals which are not subject to the APD's infirmities.<sup>8</sup>

#### **A. The APD Provides an Inadequate Justification for a Six-Month Window of Confidentiality Protection for Contract Price Information**

The APD's primary justification for adopting a six-month window of confidentiality protection for contract pricing information is that: (a) there has been a sharp reduction in renewable contract prices from 2006 to 2019; (b) there was a significant increase in the number of bids and bidders between the IOUs' 2006 solicitations and 2011 solicitations; and (c) there is a large number of renewable projects currently in the California Independent System Operator's (CAISO's) queue. However, these facts do not support the APD's determination, and further, do not outweigh the clearly established fact that disclosing very recent contract price information would materially disadvantage an LSE, in particular a CCA, during ongoing negotiations.

The sharp increase in renewable projects and decrease in contract prices has not simply occurred naturally in the marketplace. Instead, the various procurement mandates on the LSEs have sharply increased the demand for renewable procurement. This demand has been driven not

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<sup>8</sup> CalCCA notes that there are other differences between the PD and the APD; CalCCA takes no position on these other differences at this time.

only by the RPS procurement mandate in Senate Bill 100 of 60 percent renewables by 2030 but also by the need to comply with the cap-and-trade program, as well as meet locally adopted renewable targets and greenhouse gas reduction goals. Further, the contract price reductions are significantly influenced by the reduction in the cost of photovoltaic modules and wind turbines along with other cost reductions in installation and labor, which are associated with a maturing industry. This cost reduction is not solely or primarily the result of market pressure. Simply stated, the APD's six-month window of confidentiality protection is not supported by facts showing that supply exceeds demand to such a degree that pricing information has little value.

Further, the fact that there are a large number of bidders market-wide may not be relevant to an LSE that is seeking renewable procurement with specific characteristics, such as the size, location, technology type, and deliverability characteristics. An LSE may still only have a small number of bidders that qualify for a specific solicitation, so the fact that there are a large number of bidders market-wide is irrelevant to a determination of whether contract price information would negatively disadvantage that LSE in its negotiations. For CCAs in particular, this is likely to be more common because of the procurement policies adopted by their local governing boards that may restrict permissible location and technology types.

Finally, while the APD notes that the average RPS contract price reached a historic low of \$28/MWh in 2019, the 2021 Padilla Report shows that RPS contract prices increased to \$35/MWh in 2020. This included an increase in the average contract price for wind and solar projects. Given increases in demand to meet compliance requirements and local policies, it is unclear that prices will continue the same historic downward trend.

**B. The APD Makes an Incorrect Conclusion Regarding the Value of Recent Contract Price Data During Ongoing Negotiations**

The APD concludes that a six-month delay in disclosing contract price information would prevent any potential negative impacts on ongoing solicitations because: (a) the bid deadline would have passed by the time a pending contract is approved or executed; (b) bid information would be substantially out of date due to the time that generally elapses between the submittal of bids and contract execution; and (c) the information would not result in higher bids in a pending solicitation due to the “overriding impact of competition from a larger number of bidders seeking contracts.”

This analysis incorrectly focuses on the impact of bid information and the potential for new bids to be submitted that would be informed by this prior bid information. As CalCCA described in its comments on the ALJ Ruling, the primary risk associated with releasing contract price information six months after contract execution is not that it would influence new bids, but instead that it could affect ongoing negotiations from the same solicitation. Even in the later stages of negotiations there are a wide variety of reasons why the contract price or other key commercial terms may need to be re-negotiated. This could include: (a) an unanticipated change to the guaranteed COD due to permitting, interconnection, or land-acquisition delays; (b) a change in the size of the project due to availability of parts or issues with a site; or (c) new obligations on the seller or modifications to the project due to changes in Commission procurement requirements, particularly for projects co-located with storage projects. In such circumstances, the seller would be materially advantaged by having access to a fully executed contract from the same solicitation with the same LSE. The likely result is that the seller will negotiate a more favorable price or other commercial terms, passing those costs on to customers.

Similarly, the time that has elapsed since the submittal of the bid is irrelevant to the concerns raised above regarding the impacts to ongoing negotiations. The key concern is not that the seller would learn of another bid price, but that the seller would have access to a fully executed contract from the same solicitation with the same LSE that includes price and all other key commercial terms. The amount of time that has elapsed since the bid was submitted is irrelevant to this issue.

Finally, the APD's conclusion that overriding competition would eliminate the value of this pricing information is not supported by facts and incorrect. As described above, the fact that there are a large number of potential projects market-wide does not mean that LSE demand for these projects is not also commensurately high. Further, in the scenario where an LSE must renegotiate key commercial terms late in the process, it would not be a simple matter for an LSE to simply walk away from the project and return to the market and issue a new solicitation. Beyond the cost impacts, the LSE may need that specific project (with the associated COD) to meet compliance deadlines. Additionally, there may only be a limited number of projects that meet the specific procurement needs of the LSE, including the CCA's locally adopted policies. Further, for many CCAs, a solicitation is unlikely to result in so many bids that the CCA's recent contract price information would provide no value to a seller.

Therefore, the APD's conclusion that six months of confidentiality protection is adequate to prevent the release of market sensitive information and protect end-use electricity customers is unsupported and incorrect.

**C. The APD's Proposal Regarding the Time Period for Disclosing Contract Price Data Should Be Rejected as it Provides Substantially Greater Protection to IOU Contract Price Data Than CCA Contract Price Data**

The APD is structured such that contract price data would be disclosable six months after contract execution for contracts that do not require Commission approval and six months after

the date of approval for those contracts that do require Commission approval. While the Commission lacks the authority to approve CCA and ESP contracts, a significant percentage of IOU contracts require some level of Commission approval. This creates a structure where for the major IOU RPS contracts, the confidentiality window will be substantially longer than for similar contracts executed by CCAs and ESPs.

Based on a review of Commission resolutions approving IOU RPS contracts, it appears that a typical time period between IOU contract execution and Commission approval ranges from three to six months with some contracts being approved as late as twelve months after contract execution. This means that IOUs would regularly receive a 50 to 100 percent greater time period of confidentiality protection than a CCA. Crucially, this additional time would often provide the IOU with at least one year between contract execution and the public disclosure of contract price data. This is the amount of time that would be necessary for CCA's to protect ongoing negotiations from the influence of this pricing data. Therefore, one year of protection would regularly be provided to IOUs, while being denied to CCAs. Because of this difference, the APD's proposal would uniquely disadvantage CCAs and should be rejected.

The APD asserts that this is only a minor difference in timing and is justified by D.06-06-066. Specifically, the APD cites to pages 54-55 of D.06-06-066 and Conclusions of Law 15 and 23 to support this proposal. Nothing in the text of these citations justifies providing IOUs with a 50 to 100 percent greater time period of protection for contract price data. Instead, these citations merely note that there may be differences between the confidentiality protections provided to different classes of entities, and that customer harm associated with the release of data can differ depending on factors such as the size of the entity and the entity's market position. The APD

provides no justification for this discrepancy in the treatment between different classes of entity, and accordingly this difference cannot be legally sustained.

As a result of the above, CalCCA recommends that the Commission reject the APD.

#### **IV. CLARIFICATION TO PD AND APD**

##### **A. The Commission Should Clarify the Impacts of an Amendment as Set Forth in Both the PD and APD**

Both the PD and APD include the same language regarding the confidentiality protection for contract amendments, specifically that “if a contract is amended, this shall not modify the confidentiality requirements that apply to prior versions of the agreement . . .”

CalCCA generally agrees with this characterization, and clearly an LSE should not be able to avoid making contract data public by simply executing new amendments to the contract. However, the associated ordering paragraph can be read to have an unintended impact. As currently drafted, O¶ 3 of the PD and APD appears to require that the terms of an amendment be made public 30 days after execution regardless of whether the original contract is still within the confidentiality window. For example, an LSE could amend a contract six months after contract execution and still be well before the PD’s proposed protection window of 30 days after COD or three years from the contract execution or approval date. Read literally, O¶ 3 would require public disclosure of the amendment, which may include key commercial terms, even though the underlying contract is still afforded confidentiality.

O¶ 3 of both the PD and APD should be clarified to state that the terms of an amendment are publicly disclosable the later of 30 days after the date of the contract amendment execution or the date on which the underlying contract becomes publicly disclosable.

**V. CONCLUSION**

CalCCA appreciates the opportunity to submit these opening comments on the PD and the APD.

Respectfully submitted,

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## APPENDIX A

### **CALCCA's Proposed Changes to Findings of Fact, Conclusions of Law and Ordering Paragraphs of the Proposed Decision and Alternate Proposed Decision**

#### **CHANGES TO FINDINGS OF FACT**

None

#### **CHANGES TO CONCLUSIONS OF LAW**

None

#### **CHANGES TO PD/APD ORDERING PARAGRAPHS**

- PD/APD Ordering Paragraph 3. Retail Sellers amending a Renewables Procurement Standard procurement contract shall not modify the confidentiality requirements that apply to prior versions of the agreement, including the time frame for public information. After an amendment, the terms of the contract amendment are public the later of (i) 30 days after the new contract execution date, or (ii) the date on which the original contract becomes publicly disclosable.