

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

Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**MOTION TO FILE UNDER SEAL
UNREDACTED VERSION OF
2012 RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLAN
UPDATE OF DIRECT ENERGY BUSINESS, LLC
AND PROPOSED ORDER**

Pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure and in accordance with Decision (D.) 06-06-006 and D.08-04-023, Direct Energy Business, LLC (“Direct Energy”) hereby submits this motion for leave to file under seal and confidential treatment of the unredacted version of its 2012 Renewables Portfolio Standard Procurement Plan Update (“RPS Plan Update”) filed concurrently with this motion.

In D.06-06-066, the Commission adopted rules governing the confidentiality of certain categories of electric procurement data routinely submitted to the Commission by investor owned utilities (“IOUs”) and electric service providers (“ESPs”). In addition, the Commission adopted two “matrices”—one for IOU data (the “IOU Matrix”) and one for ESP data (the “ESP Matrix”)—specifying the confidential treatment to be afforded to certain categories of data, as identified in the applicable matrix, that are routinely submitted to the Commission. Subsequently, in D.08-04-023, the Commission clarified the categories of data that are eligible

for confidential treatment under D.06-06-066 and made corresponding modification to the ESP Matrix.¹

D.08-04-023 provides that where, as in the case of the RPS Plan, “[a] party files a pleading in a formal proceeding, including data of the type addressed in the Matrices to D.06-06-066, and seeks confidential treatment of that data,” the party is required to file a motion that complies with the requirements of Rule 11.4 and meets the five required showings specified in Ordering Paragraph 2 of D.06-06-066:

1. That the material constitutes a particular type of data listed in the Matrix;
2. The category or categories in the Matrix to which the data correspond;
3. That the submitting party is complying with the limitations on confidentiality specified in the Matrix for that type of data;
4. That the information is not already public; and
5. That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

On August 15, 2012, Direct Energy filed and served a redacted public version of the RPS Plan Update. To the extent data submitted to the Commission in the unredacted RPS Plan Update falls within one or more of the categories of data set forth in the ESP Matrix, the data are eligible for the confidential treatment specified in the ESP Matrix.² In addition, the Commission has previously determined that data that does not fall within a matrix category but which “consists of information from which (Matrix) information may be easily derived” is eligible for the corresponding confidential treatment specified in the matrix.³

¹ See D.08-04-023, *mimeo*, pp. 11-19 and Appendix B.

² See D.06-06-066, *mimeo*, p. 23 and Conclusion of Law 6.

³ See, e.g., R.06-05-027, Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s April 3, 2007 Motion to File Data Under Seal (May 4, 2007), *mimeo*, p. 2.

In accordance with the aforesaid requirements, Direct Energy hereby affirms that the following data for which it seeks confidential treatment is either Matrix data or consists of information from which Matrix data may be easily derived, as described in the following table:

TABLE OF CONFIDENTIAL DATA

Description of Data	Spreadsheet Location	Matrix Category	Explanation
Annual Retail Sales (MWh)	Cells B6-F6	I.A and I.B	Because Direct Energy procures all of its energy requirements for a given year through short-term transactions made shortly before and during the year in question, Direct Energy's "net short" for any given year is nearly identical with its annual retail sales in that year.
Procurement Targets (MWh)	Cells B7-F7 and B9-F9	I.A and I.B	Because Direct Energy's APTs are calculated based on annual retail sales using a formula that is in the public record, public disclosure of Direct Energy's APT (MWh) data would reveal its net short.
RPS-Eligible Procurement Data (MWh)	Cells B10-F10, B11-F11 and B12-F12	I.A and I.B	Direct Energy's annual retail sales could be calculated by multiplying Direct Energy's annual RPS procurement (MWh) by Direct Energy's reported RPS actual procurement percentages.

Direct Energy further affirms that the data for which it is seeking confidentiality treatment is not already public, and that the redacted data could be made public without the risk of harm to Direct Energy and its customers if and only if the data were aggregated with that of all electric service providers (“ESPs”).

Direct Energy therefore requests, in accordance with the confidentiality treatment specified in D.06-06-066, D.08-04-023, and the ESP Matrix, that the Commission grant confidential treatment to the first three years of forecast data and the prior year’s historical data specified in the above Table of Confidential Data. As required by Rule 11.4, a Proposed Order is attached to this motion.

Respectfully submitted,



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August 16, 2012

VERIFICATION

I, Gregory S. G. Klatt, counsel for Direct Energy Business, LLC, am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing Motion to File Under Seal Unredacted Version of 2012 Renewables Portfolio Standard Procurement Plan Update of Direct Energy Business, LLC and Proposed Order, filed in Rulemaking 11-05-005, are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

Executed on August 16, 2012, at Woodland Hills, California.



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PROPOSED ORDER

Pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure, and in accordance with Decision (D.) 06-06-006 and D.08-04-023, Direct Energy Business, LLC (“Direct Energy”), a registered electric service provider (“ESP”), filed a Motion on August 16, 2012, for leave to file under seal and confidential treatment of the unredacted version of its 2012 Renewables Portfolio Standard Procurement Plan Update (“RPS Plan Update”) filed concurrently with the motion. The Motion requests confidential treatment of specified data in the RPS Plan Update.

The data for which Direct Energy requests confidential treatment are protected under the ESP Matrix adopted in D.06-06-066, as modified in D.08-04-023. In addition, the Motion complies with the limitations on confidentiality specified in the ESP Matrix, and the data in question are not already public. Direct Energy further claims that the data can be made public without risking material harm to it and its customers only if the data are aggregated with that of all ESPs.

Therefore, it is ordered that:

1. The confidential data contained in Direct Energy’s RPS Plan Update shall remain sealed and is not to be disclosed to anyone other than Commission staff, the Assigned

Commissioner, the assigned Administrative Law Judge (“ALJ”) or an ALJ designated to decide this motion.

2. Further proceedings, if any, held with respect to matters contained in the confidential data shall be conducted in a manner the assigned ALJ deems reasonably necessary to protect the confidentiality of the data described herein;

3. Non-market participants may request access to the confidential information pursuant to applicable rules; and

4. All additional documentary evidence in this proceeding that addresses or relates to the confidential data must be treated in the confidential manner described in paragraphs 1 and 2, above.

Administrative Law Judge

Dated: _____