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 R.11-05-005

COMMENTS OF THE GREEN POWER INSTITUTE ON THE PROPOSAL ON CONFIDENTIALITY RULES

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Pursuant to the July 1, 2013, *Administrative Law Judge's Ruling Requesting Comments on Preliminary Staff Proposal to Clarify and Improve Confidentiality Rules for the Renewables Portfolio Standard Program*, as modified by a July 16, 2013, *Ruling* by ALJ Simon granting an extension to file Comments until August 5, 2013, in Proceeding R-11-05-005, the **Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program**, the Green Power Institute (GPI), the renewable energy program of the Pacific Institute for Studies in Development, Environment, and Security, provides these *Comments of the Green Power Institute on the Proposal on Confidentiality Rules*.

We note that at least six of the 24 proposals in the ALJ's *Ruling* are primarily concerned with extending confidentiality treatment to information from ESPs and CCAs. We support the principle of equal treatment of all LSEs, but as non-lawyers we do not offer legal positions on how to accomplish this goal.

Guiding Principles

The GPI fully endorses the five guiding principles presented in the *Ruling* for refining the rules of confidentiality governing the RPS program. California's RPS program retains strong popular support and interest. The ratepayers deserve the most accurate information possible in order to be able to understand how the program is working, and what it is really costing. While some data legitimately deserve confidential treatment, in our opinion confidential treatment is sought, and under the current rules granted, for far more categories of data than what is necessary to provide reasonable protection for the efficient conduct of commercial enterprise. One prerequisite for an efficient market economy is informed market participants. The excessive withholding of information as confidential is counterproductive to the development of efficient markets when it impinges on information

flow. We fully support the Commission's efforts in this *Ruling* to clarify and improve the confidentiality rules that are applied to the RPS program.

In the opinion of the GPI, there is a natural hierarchy that should be honored in terms of what kinds of information are legitimate candidates for receiving confidential treatment. For example, financial information about a particular project is more likely to be deserving of confidential treatment than is quantity information about the project's expected production of electricity. Similarly, information that is specific to a private generator is more likely to be deserving of confidential treatment than is information specific to a regulated utility. And in all cases where there is a finding that confidential treatment is appropriate for a particular category of information, there should be a strong effort to provide the equivalent information in aggregate form.

The GPI is a non-market participant, public-purpose intervenor in Commission proceedings. As such we are eligible to sign confidentiality agreements with the Commission, and gain access to information that is not available in the public domain. Were we to do so, the information under seal that we would gain access to might very well help to inform our thinking about various issues before the Commission, but the downside is that we would be prevented from using it in our public filings. We simply do not wish to be in the position of having to defend our arguments in public comments and testimonies on the basis of information that we can claim to have seen, but are unable to reveal. In our opinion, that does not foster public trust. As a result, we have chosen not to sign confidentiality agreements in connection with our Commission work, thus ensuring that we can fully express and support our work without worrying about whether it contains information that was obtained subject to confidentiality restrictions.

Group C: Rules Pertaining to RPS Compliance Reporting

In the opinion of the GPI, RPS compliance reporting is one of the key sources of information for the public regarding the past, present and future performance of California's popular RPS program. We have been involved in the process of developing

the reporting tool for the current (2011 – 2020) phase of the RPS program, and we support the Commission's intention to shrink the confidentiality window for reporting for several categories of data from three years to two years, particularly the utility's forward projection of total retail sales, and the utility's forward projections of its renewable net-short position. As the discussion in the *Ruling* correctly points out, the currently authorized three-year confidentiality window is really a four-year blackout in the public version of the spreadsheets, and the proposed reduction to a two-year window will still result in a three-year blackout.

While we support the proposal to shrink the confidentiality window for projections of retail sales and renewables net short from three years to two years, we do not think that the proposal goes far enough. In fact, we question the need to maintain any window of confidentiality for a utility's forward projection of retail sales or net-short position, particularly considering the fact that both of these categories are quantity information, not cost information, and therefore by natural hierarchy less likely to be deserving of confidential treatment. Moreover, in both cases these categories of information are forward projections, not observed data points. They are known to be uncertain, and cannot be relied on to reveal an LSE's exact net-short (or long) position for the current, or any future compliance period, in any case. Indeed, a retail seller's exact REC-procurement obligation for a given compliance period cannot be determine until the end of the period. Up to that point everything is approximate, and every reasonably sophisticated market participant is already making estimations of this quantity that closely approximate those of the retail sellers themselves.

It is probably no secret that with the current confidentiality rules in place, it is a relatively simply exercise for parties to supply their own projections of each LSE's retail sales during the blacked-out period on the public versions of the spreadsheets, for example using a simple linear extrapolation, or any other reasonable algorithm. While in most cases it is likely that such methods will produce results that mimic the blacked-out projections, there may be situations where that is not the case, and simply removing these unnecessary confidentiality restrictions would ensure that everybody understands what everybody else is

basing their positions on. Removing the confidential treatment of a portion of an IOU's projection of retail sales and renewable net-short position would have no negative consequences for the IOUs, and it would promote better functioning of energy markets through better information.

The final proposal (no. 4) in Group C is to redesign the reporting tool by separating historical compliance data from data on the present and future projections. This is a decidedly regressive proposal, and should be withdrawn. A key part of the rationale for the proposal reads:

> Separating past compliance from future projections could make it easier for all interested parties and the public, not simply the Commission's staff, to understand the retail seller's current compliance position (*Ruling*, pg. 17, point no. 2).

In fact, separating past compliance from future projections **diminishes** both the public's and the Commission's understanding of a retail seller's current compliance position, by removing the historical perspective from the picture. Historical performance does not determine future performance, but it forms the platform from which future procurement proceeds. We do not know why this proposal is being made. There is simply no benefit to be obtained by separating past and future compliance data, and a very important dimension of perspective that will be lost.

Another part of the rationale for this proposal reads:

> SB 2 (1X) eliminated the carry-over of RPS compliance deficits from one compliance period to the next. (Section 399.15(b)(9)). As a result, projections of future procurement are not relevant to evaluating information on past compliance (*Ruling*, pg. 17, point no. 3).

The conclusion in the second sentence is simply incorrect. It is true that previous procurement deficits do not carry over into future compliance periods, and in that sense they are not additive to the procurement requirements in the future compliance periods. However, the fact is that a retail seller's future procurement performance does not exist in a vacuum. By providing historical perspective on a retail seller's procurement performance, their prospects for future procurement can be seen as a continuation of the ongoing process

that it is. Procurement deficits in previous compliance periods are highly relevant to a retail seller's future procurement prospects, and should not be separated out into a separate report and/or spreadsheet.

Because historical data do not change (although occasionally they are audited and refined), retaining them in the reporting tool's database is a trivial matter that imposes no additional reporting burden on retail sellers.

We note that for our own work, the GPI maintains our own compliance spreadsheets and database, and we maintain the historical portion of the database going back to 2003, the beginning of the California RPS program. In our opinion the same should be done for the Commission's reporting tool.

Group D: Rules Pertaining to Price Disclosure

Contract price has traditionally been considered among the most sensitive of categories of information. We are impressed that the Commission is proposing to disclose contract-pricing information at the time that a draft resolution, advice letter, or application is filed with the Commission's Docket Office for approval of a contract. Public disclosure of the contract price at the time that the filing-seeking-approval is made will enhance and broaden the review and approval process at the Commission, as well as better inform the public about the true costs of the RPS program.

In fact, the current confidentiality rules, which provide for confidential treatment of contract-pricing information during the approval process for new procurement contracts, effectively limits the approval process to the cadre of parties that have signed confidentiality agreements with the Commission. Parties like the GPI that are public-purpose intervenors, but who chose not to be privy to confidential information, are unable to participate effectively in the contract-review process under the current rules. This set of proposed rule changes pertaining to price disclosure would change that.

The GPI agrees with the *Ruling*'s analysis that disclosure of the contract price at the point that the contract is submitted to the Commission for approval will not have any effect on the already-completed negotiation process between the project developer and the utility, and with the market having achieved its current state of maturity, as noted in the proposal, it can only increase market efficiency by making better information available to all market participants.

Group E: Rules Pertaining to the Costs of RPS Contracts

Almost since its inception the public has been subject to wildly varying estimates of the cost of the state's RPS program, ranging from barely observable, to being the primary cause of high electricity rates in California, to being small so far but a ticking time bomb for the future. Loosening the confidentiality restrictions on the forecasts of future RPS compliance costs developed by various parties will go a long way towards bringing clarity to the conversation.

According to the natural hierarchy we have discussed previously in these *Comments*, financial information is generally in the most sensitive category. However, in this case we are talking about projections of future costs, not current or booked costs. All parties know that projections of this nature are inherently uncertain. Thus, the idea that uncertain projections of future costs could represent legitimate trade secrets is simply not reasonable. These projections should be made public, as the proposals in the *Ruling* suggest.

The case for making public quantity information about the number of bids received in a given solicitation, and the number of bidders that are shortlisted, is even easier to make than the case for disclosing some of the price and cost information that is included in these proposals. There is no reason why categories of information such as the number of bids received and the number of bids short listed should be considered to be trade secrets, and their disclosure promotes better policy making, for example, in the approval process for the RPS and LTPP procurement plans, as well as promoting a more efficient marketplace and a better informed public.

Group F: Rules Pertaining to Commission Review of RPS Contracts and Planning

We support the set of proposals in Group F in general as promoting a more efficient marketplace through the dissemination of better information. Further, we note that the overall logic of the proposals in Group F follows the natural hierarchy that we believe should guide decisions about confidentiality: financial information is more sensitive than quantity information, information from private-sector, unregulated developers is more sensitive than information from regulated entities, and for categories of information for which confidential treatment is deemed appropriate, aggregate data are made available where data on individual projects are not.

We do question the desirability and appropriateness of prompt disclosure of information on losing bids in RPS solicitations, as the first proposal in Group F proposes to do. We appreciate the fact that this proposal is for quantity-types of information only, and keeps project-specific financial information confidential, consistent with the hierarchy we have previously discussed. However, the fact remains that projects that do not make the short list in a particular solicitation may have other opportunities to move forward, and the immediate disclosure of even quantity-types of project-specific information upon issuance of the short list could have negative commercial consequences for the losing bidders who are looking for alternative opportunities. The GPI suggests that perhaps the Commission should consider a one-year confidentiality window on the data listed in the proposal for losing bidders, rather than immediate disclosure upon filing of the short list. The same considerations apply to the second proposal in the group, in which short-listed projects that ultimately fail to secure executed contracts have their data disclosed immediately upon closure of the short list.

Group G: Rules Pertaining to General Planning and Disclosure

This proposed rule change pertains to the timing of the disclosure of confidential information relating to the bid-evaluation process for projects that were winning bidders in RPS solicitations, and whose projects ultimately achieve full operational status. At the present time the confidential information in question is not released until three years after

the project begins operations. This proposal would provide for disclosure at the shorter of the time of project startup, or 3 years following contract approval.

The release of bid-evaluation information to the public helps future bidders better understand the entire RPS solicitation process. With the rapid rate of technological change for renewable energy technology, as well as ever changing market conditions, this kind of information becomes outdated fairly quickly. Reducing the time that this information can be held in confidentiality helps to ensure that it is still useful when it is released. The commercial interests of the bidders are not harmed because by two or three years after the point where a contract was approved enough will have changed that future bids will be sufficiently different than past bids that disclosure is no longer harmful. Moreover, the developer presumably will have accumulated valuable learning that will be incorporated in their future bids.

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Respectfully Submitted,

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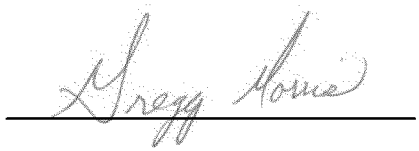
VERIFICATION

I, Gregory Morris, am Director of the Green Power Institute, and a Research Affiliate of the Pacific Institute for Studies in Development, Environment, and Security. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of *Comments of the Green Power Institute on the Proposal on Confidentiality Rules*, filed in R.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 5, 2013, at Berkeley, California.



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