

**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)

**COMMENTS OF MARIN ENERGY AUTHORITY ON ADMINISTRATIVE LAW
JUDGE'S RULING REQUESTING COMMENTS ON PRELIMINARY STAFF
PROPOSAL TO CLARIFY AND IMPROVE CONFIDENTIALITY RULES FOR THE
RENEWABLES PORTFOLIO STANDARD PROGRAM**

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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* (“ALJ Ruling”) and the July 16, 2013 email from Administrative Law Judge Simon granting in part the request for extension of time to file comments and reply comments on the ALJ Ruling, the Marin Energy Authority (“MEA”) provides the following comments on the ALJ Ruling and the preliminary proposal (“Preliminary Proposal”) of the California Public Utilities Commission (“Commission” or “CPUC”) staff to modify the confidentiality rules applicable to the renewables portfolio standard (“RPS”) program.

I. Introduction and Background

The ALJ Ruling seeks comments on the Preliminary Proposal to make the rules related to confidentiality of information about compliance, reporting, procurement, and planning for the RPS program more transparent, accessible, and consistent. The Preliminary Proposal seeks to change, expand, and formalize the existing confidentiality processes applicable to Load Serving Entities’ (“LSEs”) RPS program compliance by expediting and expanding disclosure of market-

sensitive information to advance the Commission’s policy posture that “greater public access to RPS data than other data” is important to promote the public interest in the RPS program.¹

MEA is California’s only operational Community Choice Aggregator (“CCA”). MEA currently serves customers throughout Marin County, and has begun serving customers in the City of Richmond. MEA provides generation services to upwards of 90,000 customers and anticipates expanding to approximately 125,000 customers once Richmond is fully enrolled. MEA’s customers receive generation service from MEA, and receive Commission rate-regulated transmission, distribution, billing and other services from Pacific Gas and Electric Company (“PG&E”). Therefore, all of MEA’s customers are also unbundled PG&E customers, and have a responsibility to pay for certain “exit fees” for resources allegedly secured earlier by PG&E on the customers’ behalf.

It is also instructive to be clear about the existing transparency of MEA’s procurement practices, including its RPS procurement. As a municipal entity, MEA’s procurement efforts are subject to an open, public process. Its multi-year integrated resource plan is adopted by its Board of Directors and articulates how MEA intends to serve customer demand over time and comply with various legal mandates, including the RPS. Once the Board of Directors approves any contract and the contract is then executed, it becomes a public document, and the pricing and other terms and conditions are open for inspection. This open and transparent process is at the heart of MEA’s governance structure, and is a means of ensuring that MEA’s customers are well informed and that MEA is responsive to the desire of its Board of Directors and customers.

¹ See D.06-06-066, p. 3.

The Commission has previously provided its view on the reasonableness of treating different types of LSEs differently where appropriate. When implementing Senate Bill (“SB”) 695, the Commission noted the differences between CCAs and investor-owned utilities (“IOUs”):

The Commission also noted some of the differences among the different types of RPS-obligated retail sellers. The Commission observed that it has limited authority over ESPs and CCAs.

This Commission has less overall control over how ESPs and CCAs operate than we do over how utilities operate. Also, to the extent we consider ESP and CCA operations, our concerns about their operations differ somewhat from our concerns about the operations of the investor-owned utilities. In the context of the RPS program, *our primary concern is to ensure that ESPs and CCAs do in fact reach the goal of 20% renewable energy by 2010.* [footnote omitted]. *We are, however, somewhat less concerned about the details of how they get there.*

Therefore, we do not believe it is reasonable to require these entities to be subject to the exact same steps for RPS implementation purposes as the utilities we fully regulate. We also do not believe that it is necessarily reasonable to subject ESPs and CCAs to the same RPS process requirements as each other, simply because they are not utilities. . . . [W]e are sensitive to the particular requirements and pressures of each type of entity and do not necessarily want to impose a ‘one size fits all’ RPS regulatory scheme.²

MEA has certain legal obligations to make available “public records” including its executed procurement contracts and believes such disclosure is in the public interest. There may be narrow exceptions where some contract elements may be protected to maintain confidentiality of a vendor’s “trade secrets” as permitted by the California Public Records Act. Notwithstanding the greater degree of transparency required of MEA, for the reasons described herein, MEA believes the Commission should advance the transparency of IOU procurement

² D.11-01-026, p. 6, referencing D.05-11-025, pp. 12-13, emphasis added.

made for their customers, both for RPS eligible procurement and for more conventional procurement.

As described more fully below, as unbundled PG&E customers, MEA's customers have a direct interest in prior contract commitments embedded in exit fees, as well as the prices paid and longer-term costs incurred by PG&E that may not yet be reflected in generation rates. Moreover, MEA is directly impacted by the Preliminary Proposal insofar as it portends to explicitly extend CPUC confidentiality requirements to CCAs. For the reasons set forth more fully below, and because it believes that the public interest supports greater transparency for all utility procurement efforts, MEA supports those elements of the Preliminary Proposal that provide greater transparency regarding IOU procurement, pricing, and cost information as the disclosure of such information will directly benefit both IOU and CCA customers by improving transparency about the RPS program costs that are both currently charged or committed to future rates.

II. Overall Comments on Preliminary Proposal

As a CCA, MEA is particularly interested in greater transparency around IOU procurement because it believes this will lead to better competition and it will improve decision-making at the Commission. IOU cost and pricing information transparency is also important because CCA customers are forced to pay a Power Charge Indifference Adjustment ("PCIA") to PG&E. The PCIA is an "exit fee" paid by MEA customers on a monthly basis after their departure from PG&E. The PCIA is intended to represent the above-market costs of resources procured by PG&E on behalf of a departing customer prior to that customer's departure. This amount is intended to ensure that customers who receive their electric supply from third-party providers like MEA pay their share of costs for energy acquired by PG&E to serve them prior to

their departure. Accordingly, MEA and its customers have a legitimate interest in the disclosure of IOU cost and price information, as well as any other information that can be used to forecast future IOU costs and prices. For this reason, MEA supports the Preliminary Proposal to the extent it provides for additional disclosure of IOU information.

However the Commission decides issues regarding increased transparency of utility procurement efforts, there should also be an intentional effort to minimize reporting burdens by streamlining reporting documentation, reducing preparation burdens, and avoiding unduly complex and duplicative reporting not only at the Commission, but at those other agencies and organizations like the California Energy Commission (“CEC”) and California Independent System Operator (“CAISO”) that utilize the same or essentially identical information.

III. Comments on Staff Preliminary Proposals

Below, MEA provides comments on selected elements of the Preliminary Proposal. MEA strongly supports transparency, not only in the RPS market, but with respect to all procurement. Accordingly, MEA supports the Commission’s efforts to promote transparency and encourages the Commission to go even further in disclosing procurement information. In any adopted Proposal, however, MEA cautions against any requirements that are administratively burdensome or duplicative. Reporting requirements related to disclosure of procurement information should be reasonably tailored to avoid unnecessary administrative burdens and should utilize existing data and formats to the extent possible to avoid new requirements. Absence of comments to any particular proposal does not indicate MEA’s agreement, and MEA reserves the right to provide further comment when Staff releases a subsequently refined proposal.

A. RPS Compliance Reporting

1. Staff Proposal C.1.

As a CCA, MEA already discloses its RPS procurement through public processes. Furthermore, contracts – including RPS contracts – are public documents after they are approved and executed, as required under those portions of California law applicable to its operations as a public agency.

2. Staff Proposal C.2.

The Preliminary Proposal reduces the allowable confidentiality protections for retail load forecasts to the “front two years.” This reduces the current allowed protection by a year. MEA staff frequently reports publicly to its Board with up-to-date information regarding contracted facilities and its net open procurement position (including RPS compliance). MEA supports this reduction in the Preliminary Proposal and suggests that the current IOU confidentiality protections could be further shortened, as greater disclosure of IOU retail load forecasts can help provide transparency about future procurement obligations and the costs and prices that will be associated with those procurement efforts. This information has a direct impact on MEA’s current and future customers that are or will be required to pay PCIA costs to PG&E.

The rationale provided in the Preliminary Proposal describes why disclosure of such information will not harm the IOUs. Multi-year compliance periods and the long-term nature of procurement efforts in particular ensure that disclosure of an additional year of forecast retail load information will not harm the commercial interests of PG&E. Accordingly, this Preliminary Proposal should be modified to further reduce the allowed window of confidentiality.

3. Staff Proposal C.3.

For the same reasons described in response to Proposal C.2., MEA supports this Preliminary Proposal element as it would similarly provide increased disclosure of IOU procurement compliance information. Any data related to an IOU's current RPS net short position is vitally important to ascertaining whether that IOU is on track to meet RPS procurement targets as well as whether, when, and the extent to which any additional procurement and expenditures will need to be undertaken. This can help current CCA customers understand their existing PCIA charges and help existing IOU customers understand the cost implications of staying with IOU service versus switching to CCA service. This transparency is essential to promoting informed customer decision making and substantially furthers the public interest.

This public interest in understanding the public utility cost commitments far outweighs any interest of the IOUs in hiding this information, particularly because multi-year compliance periods provide procurement flexibility and the confidentiality window can still protect the immediate compliance period data when they may be negotiating contracts. Accordingly, MEA supports modifying this element of the Preliminary Proposal to shorten the confidentiality window and provide greater transparency.

4. Staff Proposal C.4.

MEA strongly supports a streamlined reporting mechanism that can minimize compliance burdens and avoid duplicative reporting. MEA notes that currently it will separately submit data that is essentially identical to the CPUC staff and the CEC staff. While the respective agencies have different roles in the California RPS program, much of the information regarding procurement and WREGIS Certificate retirements is similar. The Preliminary Proposal suggesting a self-contained report of past compliance performance will provide greater

transparency into the RPS program, reduce the need to develop separate documentation and help current and future CCA customers understand price impacts of different service options. Utility disclosure of prior year information will not harm the IOUs where those historic load and resource delivery numbers have already been finalized. As procurement deficits will not be carried forward under the current program structure, future compliance obligations will not be impacted by prior deficits. For this reason MEA supports this Preliminary Proposal element.

B. Price Disclosure

As described above, MEA believes there is a strong public interest in the disclosure of IOU pricing information. MEA believes that timely public information will better inform California customers of future energy costs, permit more equitable comparison in service options (if available), and will increase understanding of the costs that will ultimately be incorporated in the PCIA charges assessed to CCA customers when they depart utility service. As the PCIA charge impacts current and future MEA customers, and because procurement prices are directly related to the PCIA charge, MEA and its customers have a significant interest in disclosure of IOU prices. The Preliminary Proposal discusses the current lag in publication of IOU prices, sometimes taking more than eight years, with the potential for even longer lags, after contract approval by the utility. This disclosure lag is excessive, and makes it difficult for IOU and CCA customers to understand generation and PCIA charges and frustrates the ability of customers to make informed choices about energy efficiency investments or potentially other electric service options. For this reason, MEA supports the Preliminary Proposal to the extent there is greater transparency regarding IOU prices for all procurement.

1. Staff Proposals D.1., D.2., and D.3.

Proposals D.1., D.2., and D.3. provide for earlier disclosure of IOU RPS prices, either at the time a draft resolution is issued, the time an advice letter is filed, or when application documentation is submitted. These Preliminary Proposals are vastly superior to the current practices and can lead to pricing transparency years earlier than current practices based upon a delay linked to the resource's commercial operation date. Because procurement pricing impacts overall rates and PCIA charges, price transparency is crucial for customers to make informed decisions about service options.

It is notable that at the time the Preliminary Proposal would have the IOU disclose prices, the utility has already approved the contract and the contract has already been evaluated by the utility's Procurement Review Group, indications that the project is competitive in the eyes of these experts. If the price is then disclosed, other members of the public can then comment to better position the Commission to act more appropriately as the decision-maker on behalf of utility ratepayers, ensuring that prices are reasonable. Disclosure of pricing early on also allows for entities who will bear any costs through exit fees (like the PCIA) to provide feedback on the prices and whether they are, in fact, reasonable.

The Staff rationales for these Preliminary Proposals are properly justified to warrant adoption by the Commission. Not only are millions of dollars of long-term utility customer commitments at stake, warranting public disclosure, but the Staff's reasoning explains that disclosure of executed contract prices should not impact ongoing contract negotiations given the time spread between solicitation and contract execution, thereby ensuring IOUs can continue to negotiate competitively for renewable procurement options. Therefore, these Preliminary Proposals elements should be adopted.

2. Staff Proposal D.4.

MEA only addresses this Preliminary Proposal element to the extent it would disclose prices of IOU and CCA contracts. As previously stated, MEA's contracts become public documents when approved by its Board and subsequently executed, therefore the Preliminary Proposal does not have any new substantive implications for MEA. MEA does believe that the Preliminary Proposal can be improved by providing for earlier disclosure of IOU materials on the contract execution date. Like the Proposals D.1. – D.3., after contract execution there is no longer any need to keep contract terms confidential. There is no need to wait six months. Similarly, there is little reason to have a 30 day waiting period after energy delivery other than a short administrative period, as the first day of delivery should be a sufficient timing trigger. The commercial interests of the IOUs and CCAs will be protected, as at this stage, the contract is final and binding with respect to price and delivery commitments, so there is little need to delay price disclosure any longer. Accordingly, the Primary Proposal element should be modified as recommended herein.

C. Costs of RPS Procurement Contracts

As described above, MEA is particularly interested in IOU costs as such costs are indicative of market trends and are directly related to the PCIA charges assessed to CCA customers. As the PCIA charge impacts current and future MEA customers, and because procurement costs are directly related to the PCIA charge, MEA and its customers embody the public interest in disclosure of IOU prices. For this reason, MEA supports the Preliminary Proposals to the extent there is greater transparency regarding IOU costs.

1. Staff Proposal E.1.

This Preliminary Proposal element does not appear to be a departure from current confidentiality practices as procurement volumes from the prior year are already disclosed. MEA does not provide additional comments on this Preliminary Proposal.

2. Staff Proposal E.2.

MEA supports this Preliminary Proposal element as procurement cost information from prior years is vital information to understanding generation cost trends and future rate impacts including the PCIA charges. Therefore, by disclosing such information, the Commission will allow greater transparency into the IOU RPS program and provide customers data critical to understand energy costs in California thereby allowing them to make more informed choices regarding service options and energy-related investments such as energy efficiency or distributed generation. These are essential public interests that must be advanced by any revisions to confidentiality protections. Accordingly, the Staff should move forward with this element of the Preliminary Proposal.

3. Staff Proposal E.3.

As described above, cost forecast information helps provide transparency about IOU costs in general as well as specific generation and PCIA charges. This holds true even when the information is aggregated across the IOUs. As previously discussed, in all cases MEA's current costs and related forecasts are disclosed, with the forecast information provided through its resource plan updates. Although MEA would prefer to see disaggregated cost forecast information, MEA understands there are certain commercial concerns associated with the release of disaggregated forecast data, particularly to the extent it could hamper an individual LSE's ongoing procurement negotiations. Accordingly, MEA recommends that this Preliminary Proposal element be carried forward into the revised Staff proposal.

4. Staff Proposal E.4.

Providing clarity about IOU procurement processes and practices can improve customers' understanding of the RPS program and furthers the public interest. MEA notes, however, that data received in the solicitation process from entities ultimately not selected for a contract are typically treated as commercially sensitive and potential "trade secrets" under the Public Records Act. Moreover, MEA will not disclose its internal selection and analysis processes other than in the course of the presentation of final contracts for Board approval. MEA does not disclose information which is proprietary to the vendors, and would likely need to oppose application of such a requirement on its activities.

D. Commission Review of RPS Procurement Contracts; Planning Requirements

1. Staff Proposals F.1. Through F.11.

Preliminary Proposals F.1. and F.2. involve the disclosure of certain bid information from each IOU's RPS solicitation. Notably, cost information from bids is treated confidentially for a period of 3 years. As previously stated, MEA sees data about potential projects that are not selected as proprietary to the vendor, and does not disclose data regarding potential projects that it does not select.

Disclosure of aggregated bid prices as contemplated in Preliminary Proposal F.3 is a means to advance the public interest by providing greater transparency where there is a concern about disclosure of specific bid submissions. If done, such disclosure should provide the range of bid values for similar technologies with a weighted average cost. MEA understands that every project is unique and can have special siting or development challenges that can impact both initial bid costs as opposed to final costs, but this aggregated information has potential value to the public in terms of understanding the trade-offs between certain technologies with potentially

lower short-term cost implications versus other technology types which may appear to have higher immediate costs but permit the buyer to avoid other procurement costs such as capacity or certain CAISO products. Accordingly, the Staff should move forward with this Preliminary Proposal element.

As previously described, generation forecast data is particularly useful in determining what additional generation may be needed in the future and to analyze associated cost trends. This type of information can help customers understand current and future PCIA costs and allow those customers to make more informed decisions about service options or energy-related investment opportunities such as energy efficiency or distributed generation. It can also assist with analysis of the value of the technology mix within a portfolio and the trade-offs between different technologies types. Similarly, assumptions about generation variability that potentially risk over- or under-generation are key to understanding what additional procurement costs may likely be necessary, which is directly related to generation and PCIA costs impacting IOU and CCA customers. Accordingly, disclosure of such information will advance the goal of a better informed public and advanced notice of rate trends.

MEA notes that Proposals F.9. through F.11. are tailored specifically to the IOUs. MEA reserves the right to comment on these Preliminary Proposals if their applicability extends to non-IOU retail sellers. Proposal F.10. needs additional clarification to remove potential ambiguity as to how contract amendments will be treated. The Preliminary Proposal indicates that contract amendments would not impact the confidentiality protections for the prior version of the contract, but it is unclear how the amended contract would be treated, both in terms of disclosure at the time the amendment is presented to the Commission for approval (if required), and when any approved amendment would become public. Any amended contract should reset

the clock for any available confidentiality protections from the date of the amendment, not from the date of the initial contract. Moreover, in instances where the IOUs execute amendments under their “contract administration” discretion without direct substantive or price impacts that necessitate Commission review, those types of amendments should be made public on a shorter term basis.

With respect to Preliminary Proposal F.11, information regarding utility-owned generation is just as important as other procurement and cost information for RPS purposes. This information can similarly be disclosed to provide transparency into the RPS program and to provide customers with the knowledge they need to make informed decisions about service options. Additionally, disclosing this information will encourage appropriate price signals and help lower overall costs of compliance with the RPS program. For these reasons, MEA recommends that Staff move forward with this element of the Preliminary Proposal.

IV. Effective Date

MEA notes that some parties may object to that portion of the Preliminary Proposal that would retroactively apply and trigger resubmission of compliance materials. The Preliminary Proposal³ would create an illogical gap in the application of changed policies to new and pending procurement material and that historical material which is not yet disclosed under the existing rules. This effectively means that older reports would retroactively become subject to the new rules, while reports submitted shortly before the adoption of the new rules would continue to be protected pursuant to the current confidentiality protections. This disconnection is illogical.

³ ALJ Ruling, p. 42.

VERIFICATION

I am an officer of Marin Energy Authority (“MEA”) and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 5, 2013 at San Rafael, California.

/s/ Elizabeth Kelly
ELIZABETH KELLY