

**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)

**OPENING COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON
THE PRELIMINARY STAFF PROPOSAL TO CLARIFY AND IMPROVE
CONFIDENTIALITY RULES FOR THE RENEWABLES PORTFOLIO
STANDARD PROGRAM**

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**OPENING COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON THE
PRELIMINARY STAFF PROPOSAL TO CLARIFY AND IMPROVE
CONFIDENTIALITY RULES FOR THE RENEWABLES PORTFOLIO STANDARD
PROGRAM**

In compliance with the Administrative Law Judge’s (“ALJ”) *Ruling Requesting Comments on the Preliminary Staff Proposal to Clarify and Improve Confidentiality Rules for the Renewables Portfolio Standard Program* (“preliminary staff proposal”) and the subsequent extended comment deadline, approved by email by ALJ Simon on July 16th, 2013, the Union of Concerned Scientists (“UCS”) respectfully submits these initial comments.

Since the preliminary staff proposal contains concepts but not a mark-up of how existing confidentiality rules for the Renewables Portfolio Standard (“RPS”) program would be changed, UCS’s comments are general in nature and may shift once more specific proposals are on the table for discussion. By calling the staff proposal “preliminary” the Commission gives the impression that the document is intended to tee up a set of concepts for discussion rather than present specific proposals, yet some of the sections are quite specific in terms of their intended consequences and supporting rationale. Without a specific mark-up of how the preliminary staff proposal would change seminal decisions such as Decision (“D.”) 06-06-066, UCS finds it very difficult to provide constructive feedback on some of the more detailed proposals. Therefore, while UCS appreciates the opportunity for this early stage comment, we look forward to a more thorough conversation about the problems these reforms are intended to remedy and specifically how they would change and improve existing practices and procedures.

I. The guiding principles should recognize renewable energy as a preferred resource in the state’s loading order and ensure new confidentiality rules do not discourage retail sellers from voluntarily procuring renewable energy beyond existing compliance obligations.

UCS does not object to the guiding principles contained in the staff proposal, but believes the Commission has overlooked the primary reason for supporting the “robust development of the RPS market”¹ in the first place, which is to facilitate compliance with the RPS program and more broadly, to align procurement with the state’s loading order.² The Commission’s commitment to the loading order is evidenced in multiple decisions was recently reiterated and clarified in D.12-01-033 approving the investor-owned utility (“IOU”) bundled procurement plans:

Accordingly, to clarify the Commission’s position, we expressly endorse the general concept that the utility obligation to follow the loading order is ongoing. The loading order applies to all utility procurement, even if pre-set targets for certain preferred resources have been achieved.³

In D.12-01-033, the Commission clarified that the reasons for procuring renewable energy extend beyond compliance mandates established in the RPS program, and renewable energy procurement should be supported as part of the state’s efforts to follow the loading order. Therefore, UCS believes that any proposal to modify the RPS or any other program that structures electricity procurement (renewable or otherwise) should support the principles of the loading order. In other words, new rules regarding RPS reporting, transparency, or confidentiality rules should not make it more difficult for retail sellers to procure preferred

¹ Preliminary staff proposal (Guiding principle #1), p.7.

² The “loading order” establishes that the state, in meeting its energy needs, should invest first in energy efficiency and demand-side resources, followed by renewable resources, and only then in clean conventional electricity supply. (Energy Action Plan 2008 Update at 1.)

³ D.12-01-033, p.20.

resources that it would be to procure fossil resources. In addition, the guiding principles should ensure new rules do not create a *de facto* ceiling on RPS-eligible procurement. California Public Utilities Code section 399.15(b)(3) currently states that although the Commission cannot require retail sellers to procure renewables beyond their current RPS compliance requirements, the Commission shall not stand in the way of voluntary renewable energy procurement: “The commission shall not require the procurement of eligible renewable energy resources in excess of the quantities identified in paragraph (2). A retail seller may voluntarily increase its procurement of eligible renewable energy resources beyond the renewables portfolio standard procurement requirements.” Any proposed changes to RPS confidentiality rules should not create information requirements that effectively discourage retail sellers from procuring renewables if, in the absence of additional approval hurdles, they would voluntarily seek out renewables beyond the current 33 percent by 2020 requirement.

II. The Commission must present compelling evidence for why existing RPS confidentiality rules are flawed and how proposed changes will benefit the Commission and electricity customers.

The Commission states that the preliminary staff proposal is intended to “make the rules related to confidentiality of information about compliance, reporting, procurement, and planning for the California renewables portfolio standard more transparent, accessible, and consistent.”⁴ The desire for transparency is supported by the Commission’s long-standing view that given the high level of public interest in the RPS program, the Commission will provide “greater public access to RPS data than other data.”⁵

⁴ Preliminary staff proposal, p.2.

⁵ Preliminary staff proposal, p.2 and D.06-06-006, p.3.

UCS supports transparency in Commission decision-making and decisions related to the RPS program are no exception. However, the preliminary staff proposal fails to provide a compelling reason for why the current RPS confidentiality rules and procedures are insufficient and need to be modified at this time. This is especially important given the absence of a legislative mandate.

The Commission is in the process of implementing several reforms to the RPS program required by Senate Bill (“SB”) 2 (1X) including a transition to multi-year compliance periods and a new regime for containing direct RPS procurement costs. These issues have been addressed or are in the process of being addressed in this proceeding. It appears as though the preliminary staff proposal includes descriptions of several ways in which the RPS market has grown and evolved in an attempt to justify its new reforms.⁶ Yet many of the RPS reforms made through SB 2 (1X) address the market changes described in the preliminary staff proposal. In addition, SB 836 (Padilla), enacted in 2011, requires the Commission to annually issue a report to the Legislature that describes the costs for all electricity procurement expenditures related to the RPS program. The Commission is also now required to report on the IOU’s direct and indirect cost and cost savings related to RPS procurement and all forms of distributed generation (“Section 910 report”).⁷ Given the multitude of RPS reforms that have already been made to address market conditions and increase transparency, especially around cost issues, the Commission should make a strong case as to why the reforms in the preliminary staff proposal are needed at this time. The preliminary staff proposal fails support its suggestions other than stating that “the evolution of the RPS market and the maturity of the RPS program” “reflect the

⁶ See Preliminary staff proposal, pp.9-12.

⁷ See <http://www.cpuc.ca.gov/NR/rdonlyres/53A5AE33-0954-4342-B8F2-1A04F67DFFB6/0/Section910Report2012Final.pdf>

view of staff that greater disclosure of RPS-related information is both feasible and desirable.”⁸

UCS believes the Commission must present a much more specific argument describing the problems caused by current confidentiality and reporting rules and how the staff proposal will remedy in a way that provides added benefit to the Commission and electricity customers.

III. UCS supports uniform compliance reporting rules for all retail sellers.

Timely, accurate, and publicly available compliance reports help to ensure that the customers of retail sellers can hold their utilities accountable for meeting clean energy procurement requirements, including the RPS mandate. Adequate reporting also supports long-term electricity system planning. Customer accountability and information for long-term planning are key components of the preliminary staff proposal’s guiding principles two and three.⁹ UCS strongly supports these guiding principles and therefore generally supports the concept of establishing uniform compliance requirements for all retail sellers, as described in Section C of the preliminary staff proposal. However, UCS is concerned that some of the rationale supporting “concept four” in Section C suggests that it is possible to draw a bright line between past RPS performance and present/future performance: “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.”¹⁰ While UCS supports finding a way to make compliance entirely public, we remind the Commission that it must still ensure compliance reports contain information about how retail sellers intend to remove impediments that could prohibit future compliance with the RPS program, as required by California Public Utilities Code section 399.13(a)(3)C). In reality, past compliance actions form

⁸ Preliminary staff proposal, p.12.

⁹ See Preliminary staff proposal, p.8.

¹⁰ Preliminary staff proposal, p.17.

the basis of future procurement behaviors, and if a compliance report shows a failure to comply with RPS requirements, the report should also contain evidence that the retail seller is seeking out ways to prevent additional compliance failures in the future.

IV. Any proposals on price disclosure should be justified by the value they provide the Commission and electricity customers, and include a discussion of how to create the appropriate context for price disclosure.

Any conversation about price transparency must include thoughtful discussion about the context in which prices are disclosed and how possible and/or realistic it is to accurately calculate the direct and indirect costs of any individual contract. At this preliminary stage in the Commission's proposal, UCS wonders whether competition is harmed if approved contract prices are publicly disclosed too soon before to a retail seller's next request for bids and believes the Commission should address this issue in future proposals. UCS also wonders about the value of disclosing a contract price before the contract has been approved by the Commission. The price reasonableness of that specific contract is determined by a host of variables, including a detailed least-cost best-fit analysis and comparative bids. None of that information, providing important context for an approved contract, would be made available to the public. The Commission already approves contracts based on the necessary and relevant price information. Providing the public with a glimpse, but not the entire picture, of how the Commission makes a decision on a specific contract could create more confusion and unnecessarily delay contract approvals.

Also, the preliminary staff proposal suggests that any contract submitted via application should provide data that UCS believes may be impossible to estimate.¹¹ For instance, how would an IOU parse out the indirect cost to the transmission system of approving one RPS contract if that infrastructure will support several other generation facilities? UCS urges the Commission to provide much more specific information about the value it believes itself and the public will receive from its price disclosure proposals. And finally, given the fact that fossil fuel prices are more volatile than renewables and fossil fuels generate air quality and global warming pollution whereas most renewables do not, any public discussion about prices must also include information about the environmental and economic value of renewables and the respective cost of fossil fuels. This sentiment is consistent with UCS's belief that the Commission should not impose additional requirements on the RPS program that would unfairly disadvantage renewables, and effectively discourage retail sellers from procuring electricity resources based on the loading order.

UCS thanks the Commission for this opportunity to submit comments.

Respectfully submitted,



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¹¹ Preliminary staff proposal, p.23.

VERIFICATION

I, Laura Wisland, am a representative of the Union of Concerned Scientists and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters which are 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 in Berkeley, California.

A handwritten signature in cursive script that reads "Laura Wisland". The signature is written in black ink and is positioned above a horizontal line.

Laura Wisland