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 L. JAN REID ON RPS CONFIDENTIALITY RULES

August 5, 2013

L. Jan Reid
3185 Gross Road
Santa Cruz, CA 95062
Tel/FAX (831) 476-5700
janreid@coastecon.com

TABLE OF CONTENTS

I. Introduction

Pursuant to the July 1, 2013 Ruling (Ruling) of Administrative Law Judge (ALJ) Anne Simon and ALJ Simon's July 16, 2013 email, L. Jan Reid (Reid) submits these opening comments in Rulemaking 11-05-005 concerning confidentiality rules for the Renewables Portfolio Standard (RPS) program. Opening comments are due on Monday, August 5, 2013. I will send this pleading to the Docket Office using the Commission's electronic filing system on the due date, intending that it be timely filed.

The Ruling requests that parties comment on an Energy Division Staff Proposal (Staff Proposal) concerning confidentiality rules. (Ruling, p. 4) ALJ Simon directed parties to answer a series of seven questions (Ruling, pp. 5-6) concerning the Staff Proposal. I comment on the Staff Proposal in Section V below.

II. Summary and Recommendations

I have relied on state law and past Commission decisions in developing recommendations concerning the implementation of Senate Bill 2(1x) (SB2(1X) as it applies to the Feed In Tariff (FIT) program. I recommend the following:[1]

1. The Commission should adopt the same confidentiality rules for all retail sellers. (pp. 4-5)
2. The Commission should give all retail sellers confidential treatment for the "front two years" of their bundled load forecasts and net short positions. (p. 5)
3. The Commission should adopt my recommendations concerning the disclosure of RPS contract price information. (pp. 5-7)

---

[1] Citations for these recommendations and proposed findings are given in parentheses at the end of each recommendation and finding.

4. The Commission should adopt my recommendations concerning the disclosure of price information related to the Renewable Auction Mechanism (RAM) auctions. (p. 7)

5. The Commission should reject Staff's recommendation concerning the disclosure of cost information by resource. (pp. 8-9)

6. The Commission should reject Staff's recommendation concerning RPS Generation forecasts. (p. 9)

7. The Commission should reject Staff's recommendation concerning Improved Decision Making. (p. 10)

8. The Commission should adopt my recommendations concerning Appropriate Protection for Confidential Information. (pp. 13-14)

III. Proposed Findings

My recommendations are based on the following proposed findings:

1. The Commission has historically attempted to strike a balance between confidentiality and transparency, thus protecting both the rights of ratepayers and the public's right to know as defined by the Bagley-Keene Open Meeting Act. (pp. 3-4)

2. PUC § 399.12(j)(3) states that "The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article ." (pp. 4-5)

3. Customer value can only be improved by improved modeling, improved contract negotiation, and improved outreach to prospective RPS suppliers. (p. 12)

IV. Overview

The Bagley-Keene Open Meeting Act states that: (Government Code § 11120)[2]

> The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

The Commission has also indicated a clear preference for publicly available data. The Commission has stated that "We start with a presumption that information should be publicly disclosed and that any party seeking confidentiality bears a strong burden of proof." (D.06-06-066, as modified by D.07-05-032, Appendix A, p. 2)

Public Utilities Code Section (PUC §) 454.5(g) allows the Commission to establish confidentiality rules as long as the Division of Ratepayer Advocates and non-market participants are allowed access to confidential information. This does not mean that all significant information should be classified as confidential. If all significant information is made confidential, the RPS program will become a "black box" inside which program results will be hidden from public view in clear violation of Bagley-Keene.

The Commission has attempted to strike a balance between confidentiality and transparency, thus protecting both the rights of ratepayers and the public's right to know as defined by Bagley-Keene. I believe that the Commission should continue its practice.

---

[2] See Exhibit 700, p. 16.

At a minimum, I believe that the best way for the Commission to balance transparency and confidentiality is for the Commission to establish RPS solicitation rules that emulate the rules of a competitive exchange such as the New York Mercantile Exchange (NYMEX) or the Intercontinental Exchange (ICE). In other words, RPS bidders should have the same market information that would be available to them on NYMEX or ICE.

V. The Staff Proposal

A. Transparency

Question 1: Would the proposal as a whole (or the component being discussed) promote transparency and the public interest with respect to the RPS program? Why or why not? What changes would improve the proposal with respect to its impact on transparency and the public interest in the RPS program?

1. Compliance Reports

Energy Division Staff has proposed that "The confidentiality treatment of information from compliance reports should be the same for all retail sellers." (Ruling, p. 13)

In part, the staff proposal promotes transparency by mandating that energy service providers (ESPs) be subject to the same confidentiality rules that are faced by other retail sellers such as the investor owned utilities (IOUs). Equal treatment for all retail sellers is mandated by state law. In part, PUC § 399.12(j)(3) states that "The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article." The Commission must comply with state law and adopt the same confidentiality rules for all retail sellers.

Such action will improve transparency by providing more information to the Commission, other retail sellers, non-market participants and to the public at large.

2. Bundled Load Forecasts and Net Short Positions

The Staff Proposal would give retail sellers confidential treatment for the "front two years" of their bundled load forecasts and net short positions.[3] Covered retail sellers currently have confidentiality protection for the "front three years" of their bundled load forecasts and net short positions.[4]

The Commission should approve the revised confidentiality protections for retail sellers' bundled load forecast and net short positions because they improve transparency while protecting bundled customers from the exercise of market power by RPS bidders.

3. The Contract Price

Energy Division staff proposes that "For RPS procurement contracts requiring Commission approval via resolution, the contract price is publicly disclosed in the draft resolution and in the final resolution adopted by the Commission." (Ruling, p. 20)

Although the proposal will improve transparency, I recommend that the Commission not adopt this change as proposed. First of all, contracts include both price and non-price items such as viability, community support, estimated

---

[3] The term "front" is defined in footnote 23 on page 14 of the Ruling.

[4] The Ruling points out that in practice, the protection of the "front three years" under current use of the Matrix extends to four years, with the inclusion of the year of the report. (Ruling, p. 14, Item 3 and p.16, Item 2)

transmission costs, and time of expected generation. In order to get an accurate picture of the value of a contract, the public must have access to all of the information related to the contract.

If all contract information is publicly released, it will place the IOUs (and their ratepayers) in an unfair position with regard to future RPS solicitations and contract negotiations. Public disclosure will then essentially set a floor price for RPS bids and contract negotiations.

In a competitive exchange, buyers and sellers will have access to the last clearing price, the general location of the generating resource (i.e., NP-15, SP-15, etc.), and the size of the contract in megawatts (MW). The names of the buyers and sellers are not disclosed in a competitive exchange.

Therefore, I recommend that only the following information be publicly disclosed at the time of a retail seller's issuance of an RPS solicitation:

1. The date the contract was signed and the expected commercial operation date.
2. The general location of the generation resource (i.e., NP-15, SP-15, ZP-26, California/Oregon Border, etc.)
3. The size of the contract in MW.
4. The energy price of the contract in $/megawatt hour (MWh).

Some retail sellers do not conduct RPS solicitations. Instead, they choose to meet their RPS requirements by engaging in bilateral negotiations. In the case of retail sellers who do not conduct RPS solicitations, I recommend that only the following information be publicly disclosed at the time the draft and final resolutions are issued:

1. The date the contract was signed.

2. The general location of the generation resource (i.e., NP-15, SP-15, ZP-26, California/Oregon Border, etc.)
3. The size of the contract in MW.
4. The energy price of the contract in $/megawatt hour (MWh).
5. The commercial operation date.

4. RAM Prices

Energy Division Staff has proposed that "For RPS procurement contracts submitted for Commission approval via advice letter but not submitted through a Tier 3 advice letter that requires approval by Commission resolution (e.g., contracts under the renewable auction mechanism (RAM)), the contract price is publicly disclosed at the time the advice letter is filed." (Ruling, p. 23)

The Commission has ordered that "In each RAM solicitation, bids will be screened for viability and selected based on price, using a streamlined utility bid evaluation process that serves to expedite the procurement and review process and increase market transparency." (D.10-12-048, p. 3)

Since advice letters contain the name of the successful bidder and RAM auctions are price-only auctions, I recommend that only the following information be publicly disclosed 30 days prior to an IOU's next RAM auction:

1. The date the contract was signed from the last RAM auction.
2. The energy price of the contract in $/megawatt hour (MWh) in the last RAM auction.

My recommendation will improve transparency, provide valuable bidding information to owners of RAM generation, and protect IOU ratepayers from the exercise of market power by bidders in the RAM auction.

5. RPS Contracts Submitted Via Application

Staff proposes that a series of information be publicly disclosed in the case of IOUs' RPS procurement contracts that are submitted for Commission approval via application. (Ruling, pp. 23-24)

I agree with the list of information that Staff feels should be publicly disclosed. However, the Commission should apply this standard to all RPS procurement contracts submitted by application, not just the IOUs'. As mentioned previously, state law requires that all retail sellers be treated equally. (See PUC § 399.12(j)(3))

6. RPS Contracts that Do Not Require Commission Approval

Staff recommends that "For RPS procurement contracts that do not require specific Commission approval (e.g., any IOU's contracts with costs authorized to be booked directly to the IOUs' Energy Resource Recovery Account (ERRA); ESPs' contracts; CCAs' contracts) the contract price is publicly available six months after the contract is signed or 30 days after deliveries of energy and/or RECs under the contract commence, whichever occurs first." (Ruling, p. 25)

The Staff proposal approves transparency and does not harm IOU ratepayers. Therefore, I agree with the Staff proposal for the reasons given on pages 25-26 of the Ruling.

7. Cost Forecasts By Resource

Staff recommends that "RPS procurement contract generation cost forecasts of each retail seller are public when aggregated by resource category (e.g., wind, solar, geothermal, etc.), so long as there are more than two contracts or facilities in the resource category." (Ruling, p. 29)

Staff's recommendation has no significant effect on transparency and provides no useful information to bidders in future RPS solicitations. RPS bids are evaluated against all other RPS bids and are not evaluated based on resource. State law requires retail sellers to meet an overall RPS obligation. State law does not require retail sellers to procure RPS contracts by resource.

Therefore, the Commission should reject Staff's recommendation concerning Cost Forecasts by Resource.

8. RPS Generation Forecast

Staff recommends that "The RPS generation forecast is public for RPS procurement offers that have been short-listed in the solicitation process of an IOU, or that are the subject of bilateral negotiations between an IOU and a generation developer, if aggregated by resource category, and there are more than two contracts in a category." (Ruling, p. 34)

Staff's recommendation has no significant effect on transparency and provides no useful information to bidders in future RPS solicitations. RPS bids are evaluated against all other RPS bids and are not evaluated based on resource. State law requires retail sellers to meet an overall RPS obligation. State law does not require retail sellers to procure RPS contracts by resource.

Therefore, the Commission should reject Staff's recommendation on RPS Generation forecasts.

9. RPS Generation Forecast Assumptions

Staff recommends that "The RPS generation forecast assumptions used by each IOU for purposes of calculating that IOU's renewable net short (RNS) are public, including project viability and failure assessment." (Ruling, p. 35)

Although Staff's proposal will improve transparency, it is of dubious value to most bidders and potentially harmful to IOU ratepayers. Larger RPS bidders may be able to use the same assumptions and forecast the RPS generation forecast for a future year. These bidders can then exercise market power by withholding supply in one year and bidding their supply when market conditions are more favorable to them.

Additionally, the proposal only applies to IOUs and not to all retail sellers. If the Commission adopts Staff's proposal, the Commission should apply this standard to all retail sellers consistent with PUC § 399.12(j)(3).

B. Improved Decision Making

Question 2: Would the proposal as a whole (or the component being discussed) contribute to improved decision-making by the Commission? Why or why not? What changes would improve the proposal with respect to its impact on improving decision-making about the RPS program at the Commission?

The Staff Proposal will not contribute to improved decision making by the Commission. There is no information in the proposal that cannot currently be obtained by the Energy Division or by the Commission via the discovery process. For example, if the Commission wants bid information concerning an IOU's RPS solicitation, the Commission can issue an order or send the IOU a discovery request. Although the Energy Division cannot issue orders, it can request information from the IOUs on any aspect of the RPS program.

Therefore, the Commission should reject Staff's recommendation concerning Improved Decision Making.

C. Improved Coordination

Question 3: Would the proposal as a whole (or the component being discussed) contribute to improved coordination between the Commission and other agencies and organizations with respect to California's energy policy, procurement planning and/or transmission planning. Why or why not?

The proposal will certainly contribute to improved coordination between the CPUC and other agencies and organizations. Staff has stated that:

> Increased planning coordination within the Commission with respect to the LTPP proceeding and outside the Commission (e.g., CEC, CAISO) will require greater transparency in forecast cost information. (Ruling, p. 30)
>
> Increased planning coordination within the Commission with respect to the LTPP proceeding and outside the Commission (e.g., CEC, CAISO) will require greater transparency in information about proposed RPS-eligible generation projects, as well as historic information. (Ruling, p. 33)
>
> Coordination between RPS and LTPP planning processes, as well as with CAISO, will be improved with earlier, as well as greater, public availability of information about new projects for RPS-eligible generation, including but not limited to information about proposed interconnection points. (Ruling, p. 36)

I agree with Staff that its proposal will result in greater coordination between the CPUC and other agencies. However, the Commission should consider other factors besides improved coordination. These factors include: legal requirements, the potential exercise of market power by RPS suppliers, and the burden of additional reporting requirements on retail sellers.

D. RPS Value

Question 4: Would the proposal as a whole (or the component being discussed) improve the value received by the customers of retail sellers from RPS procurement? Why or why not? What changes would improve the proposal with respect to the value to customers of retail sellers?

The proposal will not improve the value received by customers of retail sellers from the RPS program. The Commission has rejected very few RPS contracts since the program was first established in 2002 by Senate Bill 1078. It is evident that retail sellers are the agent in an agent-client relationship with their customers. Customer value can only be improved by improved modeling, improved contract negotiation, and improved outreach to prospective RPS suppliers. The Staff proposal does not improve modeling, the contract negotiation process, or the RPS outreach process.

E. RPS Market Stability

Question 5: Would the proposal as a whole (or the component being discussed) contribute to the long-term stability of the RPS market? Why or why not? What changes would improve the proposal with respect to the long-term stability of the RPS market?

The Staff Proposal will have a positive effect on the long-term stability of the RPS market. If the Commission approves the Staff proposal on disclosure of contract prices, this disclosure will guide the behavior of RPS bidders. I discuss contract prices in Section V.A.3 above.

If a previous RPS contract were accepted with a bid of $100/MWh, RPS bidders would know that their bid must be at or below $100/MWh in order to be accepted. Bids will tend to become more competitive and there will be less volatility in the prices submitted by RPS suppliers.

F. Appropriate Protection for Confidential Information

Question 6: Would the proposal as a whole (or the component being discussed) provide appropriate protection to information for which there is a legitimate need for confidentiality? Why or why not? What changes would improve the proposal with respect to the protection of information for which there is a need for confidentiality?

The proposal does not provide appropriate protection for information where there is a legitimate need for confidentiality. Bundled ratepayers need to be protected against high RPS prices. There are some sections of the proposal that do not provide adequate protection to ratepayers. I provide a few examples below.

The Staff Proposal would require the disclosure of the names and price information submitted by bidders. The disclosure of bidders' names is often unnecessary and could have a chilling effect on the RPS negotiation process. If bidders know that they are required to divulge proprietary information concerning their firm, they will expect a premium to compensate them for the loss of proprietary information.

The Staff Proposal would disclose the aggregated RPS generation forecast and cost forecast by resource with a minimum of two bidders per resource. This information is highly confidential. If there were three shortlisted bidders for a given resource, it would not be difficult for another bidder to estimate the generation forecast and cost information of other bidders.

The Staff Proposal would disclose the IOUs' RPS generation forecast assumptions. Since ratepayers pay the salaries and modeling expenses of the IOUs, this information is a ratepayer asset. The Staff Proposal would give this ratepayer asset to unregulated entities to the detriment of bundled ratepayers.

Therefore, I propose the following changes to the Staff Proposal:

- Withhold the names of bidders throughout the proposal by adopting my recommendations in Sections V.A.3 and V.A.4.
- Delete the Staff recommendation concerning Cost Forecasts by Resource. (See Section V.A.7)
- Delete the Staff recommendation concerning RPS Generation Forecast. (See Section V.A.8)
- Delete the Staff recommendation concerning RPS Generation Forecast Assumptions. (See Section V.A.9)
- Delete Item 7 on pages 35-36 of the Ruling.

G. Legal Issues

Question 7: What, if any, legal issues might exist with respect to the implementation of the proposal as a whole (or the component being discussed)? What changes if any, would improve the proposal with respect to reducing or eliminating legal issues regarding its implementation? What changes to the existing legal framework, if any, would reduce or eliminate the issues identified?

A number of legal issues are likely to be raised by parties in this proceeding. Although I do not agree with all of the issues listed below, they are legal issues that the Commission should consider. The following six legal issues might exist with regard to the implementation of the Staff Proposal:

1. Does the Commission have the legal authority to require electric service providers (ESP) to publicly disclose price information, cost information or contract terms from their Renewables Portfolio Standard (RPS) procurement contracts? (See Joint Motion of Shell Energy North America (US), L.P. and The Alliance For Retail Energy Markets to Strike Portions of the Preliminary Staff Proposal on Confidentiality Rules for RPS Procurement, July 26, 2013)

2. Has the Commission adopted appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, consultant reports, or any combination?

3. Has the Commission abused its discretion in adopting the Staff Proposal?

4. Is some of the information sought by the Commission already available via the Federal Energy Regulatory Commission's Form 1 Reports?

5. Can the Commission obtain the requested information via other methods, such as by Commission orders or by the discovery process?

6. Can the Commission share planning information with the California Independent System Operator or the California Energy Commission without publicly disclosing such information?

If the Commission were faced with a court challenge related to the Staff Proposal, the Commission would likely have to show that its decision regarding confidentiality rules was reasonable and appropriate despite the fact that some of the information sought is market sensitive, proprietary, and harms customers.

At a minimum, I recommend that the Commission adopt my recommendations outlined in Section V.F. This should eliminate some, but not all, of the more contentious issues. The Commission can only be sure that its actions will withstand a court challenge if the legislature gives the Commission specific authority to use its best judgment in changing the RPS confidentiality rules.

I find it unlikely that the legislature will give the Commission such broad statutory authority.

VI. Conclusion

The Commission should adopt my recommendations for the reasons given herein.

* * *

Dated August 5, 2013, at Santa Cruz, California.

/s/

L. Jan Reid
3185 Gross Road
Santa Cruz, CA 95062
Tel/FAX (831) 476-5700
janreid@coastecon.com

VERIFICATION

I, L. Jan Reid, make this verification on my behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that 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.

Dated August 5, 2013, at Santa Cruz, California.

/s/

L. Jan Reid
3185 Gross Road
Santa Cruz, CA 95062
Tel/FAX (831) 476-5700
janreid@coastecon.com