

**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)

**REPLY 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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**REPLY 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 reply comments.

I. Introduction and Summary

UCS applauds the Commission for taking a fresh look at how information is disclosed and protected in the RPS program. UCS believes the Commission must strike a delicate balance between ensuring enough information is disclosed so that public stakeholders can hold retail sellers accountable for RPS procurement activities, and protecting market-sensitive information to ensure a competitive bidding environment that puts downward pressure on prices. In addition, as explained in detail in UCS’s opening comments, the Commission must do a better job articulating the drawbacks of current confidentiality rules and the benefits of making changes.

In general, UCS believes there is more value in focusing this exercise on deciding whether rules protecting information about the project characteristics of executed contracts, retail sellers’ compliance history, and estimates of future procurement requirements should be relaxed. UCS remains concerned that releasing information about prices and project bids that failed to

obtain contracts could be counterproductive for the market and confusing for the general public that seeks to understand how California's RPS program is unfolding.

II. Section C: Compliance Reporting – Retail Sales Forecasts

The Commission combines its proposal to reduce the confidentiality window for reported retail sales forecasts with its proposal to reduce the confidentiality window for renewable net short calculations, and UCS believes it's important to consider these two concepts separately.

UCS supports the Commission's proposal to reduce the confidentiality window for reported retail sales forecasts and suggests the Commission explore eliminating confidentiality protections for this data altogether. Utility-specific bundled retail sales forecasts form the basis for statewide energy planning scenarios, utility-specific procurement need determinations, and transmission planning processes. UCS does not believe that releasing this information will jeopardize the development, financing, or negotiating position of any renewable energy developer or utility. All three investor-owned utilities ("IOUs") object to reducing the confidentiality treatment for bundled retail sales forecasts but do not provide specific information about why releasing this data would harm ratepayers. Instead, they conflate their objections to releasing retail sales forecasts with their objections to releasing renewable net short information. For example, San Diego Gas and Electric Company ("SDG&E") combines the term "bundled load" (aka retail sales) with the terms "related need" or "net open" (aka renewable net short) in order to oppose more disclosure of either type of information.¹ But in supporting its objection, SDG&E's concentrates its concern on the release of renewable net short information, which it fears could be used by generators "to materially increase contract prices (or artificially decrease

¹ See SDG&E, pp.25-26.

prices and seek a later re-pricing).”² SDG&E does not provide a reason why the Commission should not release retail sales forecasts. Similarly, Southern California Edison (“SCE”) recommends the Commission not disclose retail sales forecasts “in order to avoid disclosing an IOU’s near-term renewable net short to market participants...”³ Pacific Gas and Electricity Company (“PG&E”) also ties its objection to the release of net short information: “The need to protect an LSE’s bundled load forecast is tied to its net open position...”⁴

UCS understands that by disclosing retail sales forecasts, stakeholders can calculate an individual retail seller’s RPS procurement obligation for a compliance period. But UCS fails to see why this information is harmful. On the contrary, this information gives market participants a more accurate understanding of the size of the RPS market in California. Retail sales forecasts by themselves do not reveal whether a utility is short or long on its RPS obligations, and therefore would not impact a retail seller’s negotiating position. Furthermore, as Green Power Institute (“GPI”) points out, market participants already estimate this number.⁵ Allowing everyone to work with the same set of assumptions enhances statewide planning activities focused on meeting current procurement requirements and enables energy planners to explore the impacts of future procurement policies. At minimum, UCS recommends that in a public workshop the Commission revisit its reasons for keeping the current plus three future years of retail sales forecasts confidential in light of the increased interagency planning activities and the benefits that accurate near-term retail sales forecasts would provide.

III. Section C: Compliance Reporting – Renewable Net Short

² SDG&E, p.26.

³ SCE, p.13.

⁴ PG&E, p.8.

⁵ GPI, p.3.

UCS also supports reducing the confidentiality treatment for a retail seller's renewable net short position. UCS believes the Commission must strike a balance between disclosing enough information about the RPS program to create public accountability for retail sellers' procurement activities throughout the program's 3 and 4-year compliance periods, and protecting a retail seller's negotiating position in the RPS market. One way to do this might be to publish retail sellers' renewable net short positions at the beginning of a compliance period, so that the public can get a sense of how past procurement activities have or have not positioned the retail seller for future success, and what the public should expect from its utility in terms of clean energy investments in the next 3-4 years.

IV. Section C: Compliance Reporting – Compliance Plans

In its opening comments, UCS cautioned the Commission against changing reporting requirements in a way that completely separates past compliance history from future procurement strategy. UCS is concerned that reporting on past compliance behavior without connecting past compliance activities to future procurement plans will make it more difficult for regulators and other stakeholders to obtain a more holistic look at a utility's RPS procurement activities over time.⁶ GPI seems to share this concern: “separating past compliance from future projections diminishes both the public and the Commission’s understanding of a retail seller’s current compliance position, by removing the historical perspective from the picture.”⁷

UCS believes that a holistic understanding of where a retail seller has been and where it is headed will be important information for the Commission to capture if later, it must consider whether or not a utility should be penalized for failing to meet a specific RPS procurement

⁶ See UCS Opening Comments, p.5.

⁷ GPI, p.4.

requirement. Section 399.15(b)(5) of the Public Utilities Code specifies that the Commission shall waive penalties for RPS non-compliance if it determines that certain factors were “beyond the control of the retail seller” and that the retail seller took “reasonable” measures under its control to mitigate circumstances that prevented compliance. It will be very difficult for the Commission to evaluate the reasons that led to a retail seller’s non-compliance unless it collects information about the course of a utility’s RPS procurement activities throughout a compliance period. Moreover, UCS believes that establishing self-contained compliance reports that are devoid of forward-looking analysis is contrary to the statutory requirement that retail sellers include, as part of their annual compliance reports, “Recommendations to remove impediments to making progress toward achieving the renewable energy resources procurement requirements established pursuant to this article.”⁸ UCS questions whether retail sellers would be able to include recommendations on how they plan to prevent future non-compliance in a meaningful way if they do not compare their current RPS position and compliance status to future procurement requirements.

V. Section D: Price Disclosure

UCS echoes the concerns of the IOUs that disclosing contract price information too soon before another request for offers could impact the pricing behavior of other sellers and result in higher prices for ratepayers.⁹

In addition, UCS disagrees with the Division of Ratepayer Advocates (“DRA”) that the Commission should disclose the contract prices for technologies “in competitive markets” but refrain from disclosing the prices of technologies “at risk for market manipulation due to few

⁸ California Public Utilities Code Section 399.13(a)(3)(C).

⁹ SDG&E, p.18; PG&E, p.11; SCE, p.15

providers relative to the technology’s mandated level of procurement.”¹⁰ As DRA correctly points out, “the staff proposal did not describe the criteria for a mature market...”¹¹ Accepting DRA’s suggestion would require the Commission to spend time determining the characteristics of a mature market, and periodically revisiting its definitions. UCS fears this exercise would create market uncertainty and is not a good use of Commission staffs’ time.

VI. Section E: Procurement Performance and Costs

UCS agrees with the Independent Energy Producers Association (“IEP”) that there is no compelling reason for the Commission to withhold data illustrating a retail seller’s procurement performance in past years.¹² The Commission already releases quarterly reports to the legislature that contains information about the IOUs’ annual procurement progress.¹³ Since the RPS procurement obligations are no longer annual, but cumulative procurement requirements for three or four-year periods, disclosing annual procurement performance will be an important way for the Commission and the public to understand the rate of a retail seller’s procurement throughout a compliance period.

UCS recommends that the Commission address the appropriate disclosure of procurement costs in its ongoing cost containment proceeding. The ongoing cost containment proceeding, in addition to the “Padilla” report required by Senate Bill (“SB”) 836, make it unnecessary for the Commission to address procurement costs in this staff proposal.

VII. Section F: Procurement Contract Planning Requirements – Executed Contracts

¹⁰ DRA, p.2.

¹¹ DRA, p.3.

¹² IEP, p.9.

¹³ See Renewables Portfolio Standard Quarter 1 2013 Report, California Public Utilities Commission, August 5, 2013.

The Commission currently maintains a project status table on its website that contains information on all projects that have received a contract from an IOU.¹⁴ This information is separated into worksheets containing information on existing projects, Commission-approved contracts that are in development, and executed contracts that are pending before the Commission. Each worksheet contains project-specific information including project name, general location information, generation forecast, and online delivery date. UCS believes this information creates important transparency for the RPS program and should be expanded to include information for contracts executed with energy service providers (“ESPs”) and community-choice aggregators (“CCAs”). For executed contracts that have already been approved by the Commission or are pending Commission approval, UCS thinks it’s reasonable to also include the WECC Bus ID where the project will be located, as well information describing the portfolio content category for each contract.¹⁵

The Commission also proposes to disclose the expected air and water pollution emissions associated with every executed RPS contract.¹⁶ UCS is not opposed to this, but if this information is already tracked and maintained elsewhere, the Commission should simply provide a link so that staff does not spend time ensuring the emissions data remains current. For example, the Commission could provide a link to the emissions inventory database maintained by the California Air Resources Board (“CARB”), which allows parties to search by generation facility name, air district, air basin, or county.¹⁷ However, before adopting this additional reporting requirement for executed contracts, the Commission should clarify what it means by “air and/or water pollutants.” For air pollutants, is the Commission referring to greenhouse

¹⁴ See <http://www.cpuc.ca.gov/PUC/energy/Renewables/>

¹⁵ The Commission has proposed including the WECC Bus ID in the preliminary staff proposal on pages 35-36, but not the PCC.

¹⁶ CPUC Preliminary Staff Proposal, p.34

¹⁷ See <http://www.arb.ca.gov/app/emsinv/facinfo/facinfo.php>

gasses such as methane, nitrogen oxides, sulfur oxides, and particulate matter, or also proposing to include toxic air emissions? UCS understands that stationary facilities are required to report toxic air emissions to local air districts, but the facilities are only required to update this information if there has been an increase in emissions. Therefore, reports generally represent maximum emission values and not annual or average data. The Commission should provide more clarity on what types of air and water pollutants it would like to disclose so that parties can more thoroughly understand the implications of these reporting requirements.

VIII. Section F: Procurement Contract Planning Requirements – Bids That Fail to Obtain Contracts

At this time, UCS is not convinced that there is any value to releasing project specific information, including price information, about bids that did not receive an RPS contract. UCS agrees with PG&E that "...information concerning bids received in an RFO, but not shortlisted, has little value for planning purposes."¹⁸ This information does not advance planning processes because these projects will not be built and does not help developers understand why their bids were not selected. Moreover, these contracts could have been rejected because they had a higher likelihood of project failure for any number of reasons. Releasing this information could give the impression that some of these problematic projects might have been built, which could unnecessarily stoke fears about poorly planned projects and promote misunderstanding regarding where the RPS program is headed.

IX. Section G: General Planning and Disclosure

¹⁸ PG&E, p.16

The Commission also proposes, for each project that received an RPS contract, to disclose the individual criteria evaluation and scores undertaken in the IOUs' least-cost best-fit ("LCBF") processes. Instead of automatically releasing this information three years after the contract is approved, the information can be released 30 days after energy delivery begins. While UCS believes that releasing LCBF information three years after the project begins generating electricity is probably too long of a period to keep this information confidential, simply releasing the information earlier will not improve the bidding process or ensure that the projects selected are truly the appropriate balance between price, location, environmental protection, and generation profile. Instead, UCS believes that more clarity surrounding the LCBF evaluation process would improve future bids. Specifically, a stronger signal from the IOUs before an RFO is released that signifies the types of projects they seek and how they will weigh and otherwise evaluate project-specific criteria in the LCBF process would help improve the bidding process. SCE states that "The IOUs provide detailed descriptions of their least-cost best-fit evaluations in their RPS procurement plans."¹⁹ But these descriptions tend to focus on listing the evaluation criteria and not on explaining how various criteria are weighted. For example, here's how SCE explains the role of quantitative and qualitative factors in their LCBF ranking:

SCE's LCBF quantitative evaluation of the Proposals incorporates energy and capacity benefits with contract payments, transmission cost, debt equivalence, and congestion cost to create individual benefit and cost relationships, namely, the Renewable Premium. It is the Renewable Premium that is used to rank and compare each project. Qualitative attributes of each proposal are then considered to further screen the short list and determine tie-breakers to arrive at a final short list of Proposals.²⁰

¹⁹ SCE, p.26.

²⁰ Southern California Edison Company's 2013 Renewables Portfolio Standard Procurement Plan, Public Appendix H.2 Redline of SCE's Least-Cost Best-Fit Methodology, June 28, 2013, p.11

There is very little information in this description that gives potential bidders any idea of which criteria are most important and how best to design their project to receive a winning bid. In previous comments in this proceeding, UCS has advocated the Commission hold a workshop to discuss the relevance of the current LCBF criteria and whether the way in which these criteria are evaluated has resulted in the best contracts for California's environment and ratepayers.²¹ As part of a discussion on improving LCBF evaluations, UCS supports a discussion of how federal and state land and species planning efforts can be taken into account to direct projects to areas that will adequately minimize impacts to land and species.

In addition, UCS does believe that there is any value to publishing individual project viability scores and failure assessments and agrees with DRA's reasoning: "Many projects currently in development have not obtained financing, and releasing either the PVC score or some other numeric estimate of success could seriously undermine their efforts to secure financing and achieve other milestones."²²

Respectfully submitted,



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²¹ See UCS Reply Comments on the Second ACR Issuing Procurement Reform Proposals and Clarifying a Schedule for Comments on Proposals, December 12, 2012, pp.6-7.

²² DRA, p.4.

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 27, 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