

**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)

**CALPINE POWERAMERICA-CA, LLC'S 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 ("*ALJ Ruling*") Calpine PowerAmerica-CA, LLC ("CPA") submits these comments on the preliminary staff proposal to clarify and improve confidentiality rules for the Renewables Portfolio Standard ("RPS") program (the "*Staff Proposal*").¹ CPA's comments are limited to issues raised in the *Staff Proposal* that may impact electric service providers ("ESPs") and their customers.²

I. INTRODUCTION

Any changes to the current confidentiality rules adopted by the California Public Utilities Commission ("Commission") for the RPS program must be carefully considered and undertaken only when such changes provide demonstrable benefits to the public interest, electric customers, the Commission's decision-making process and the long-term stability of the RPS market.³ In no event, however, should such changes result in a reduction in the level of protection from disclosure afforded to price terms in ESP contracts. While CPA agrees that public disclosure of certain aggregate information relating to the RPS program may be beneficial to some stakeholders, CPA believes the Commission must also account for the unique market

¹ The deadline for submitting comments was extended to August 5, 2013 pursuant to an email ruling by Administrative Law Judge Anne Simon on July 16, 2013.

² CPA's comments do not respond to all of the issues identified in the *ALJ Ruling*. CPA reserves the right to provide comments on additional issues not addressed herein during the course of the proceeding.

³ See *ALJ Ruling* at 5-6 (identifying seven issues for general consideration).

environment in which a retail seller operates. Consistent with such analysis, the Commission should not change the confidentiality rules to the extent such changes may reveal information that is commercially sensitive to ESPs.

ESPs and Investor-Owned Utilities (“IOUs”) operate in very different regulatory and market environments. One fundamental difference is that IOUs’ rates and terms of service are public, tariff-based and set by the Commission, while the commercial relationship between an ESP and its customers is bilaterally negotiated and typically not publicly disclosed by either the ESP or its customer. Given this difference, the disclosure of certain types of RPS information will affect an ESP and an IOU differently and, in the case of an ESP’s procurement contract costs, such impact warrants protection from public disclosure.

In addition to protecting ESP procurement cost information, the Commission must also ensure that revisions to the RPS confidentiality rules do not result in customer specific information being inadvertently disclosed. Both the legislature and the Commission have historically taken steps to protect customer specific information from public disclosure⁴ and any changes to the current rules must be sensitive to the historical protection given this information.

II. COMMENTS ON SPECIFIC STAFF PROPOSALS⁵

C. Preliminary Staff Proposal on RPS Compliance Reporting

1. The confidentiality treatment of information from compliance reports should be the same for all retail sellers. [ESP Matrix section I.A]

Any potential changes to current RPS confidentiality rules and procedures must account for the different regulatory and market structures under which that IOUs and ESPs operate. These fundamental differences require the Commission to carefully consider the commercial relationship between ESPs and their customers when balancing the harms and benefits of

⁴ See e.g. Pub. Util. Code § 394.4 (a).

⁵ Heading and section numbers correspond to the numbering convention used in the *ALJ Ruling*.

disclosing RPS procurement related information. These same considerations that may not be necessary with respect to the IOUs, which have captive customer bases and provide service pursuant to Commission-approved tariffs. These differences have been acknowledged by the legislature, which has limited the Commission's jurisdiction over ESPs.⁶ As the Commission moves forward in its consideration of potential changes to RPS confidentiality rules, it is important to recognize that, due to fundamental differences between ESPs and IOUs, there are valid reasons for maintaining different confidentiality rules for each type of retail seller.

2. Information for the “front two years” of a retail seller’s energy forecast of bundled load may be kept confidential.

Any reduction in the length of time that demand/load information may be kept confidential must not result in the disclosure of customer-specific information. As part of California's electric restructuring, the Commission was required to implement certain “minimum standards” for ESPs, including standards related to the confidentiality of customer-specific information, such as usage:

Confidentiality: Customer information shall be confidential unless the customer consents in writing. This shall encompass confidentiality of customer specific billing, credit, or usage information. This requirement shall not extend to disclosure of generic information regarding the usage, load shape, or other general characteristics of a group or rate classification, unless the release of that information would reveal customer specific information because of the size of the group, rate classification, or nature of the information.⁷

Because some ESPs serve only one or two retail customers, if such ESPs are required to publicly disclose RPS demand and load related information, they would essentially be disclosing customer-specific usage information in direct contravention of the law. To protect against the

⁶ See e.g., Pub. Util. Code § 394 (f) (“Registration with the [C]ommission is an exercise of the licensing function of the [C]ommission, and does not constitute regulation of the rates or terms and conditions of service offered by electric service providers. Nothing in this part authorizes the [C]ommission to regulate the rates or terms and conditions of service offered by electric service providers.”)

⁷ Pub. Util. Code § 394.4 (a).

inadvertent disclosure of customer-specific information, steps, such as aggregating demand/load information for all ESPs, should be taken.

D. Preliminary Staff Proposal on Price Disclosure Background

- 4. 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. [Matrix Section VII.F, VII.G.; ESP Matrix Section I.C.]**

With respect to ESPs, current confidentiality rules provide only for disclosure of contract summaries (e.g., counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date) but otherwise protect all other terms for three years or until one year after contract expiration. The current RPS confidentiality rules also provide that ESPs may keep the price term in contracts confidential.⁸ The current rules should *not* be changed to reduce the level of protection afforded to pricing terms.

ESPs do not have captive customers and the commercial relationship between an ESP and its customers is bilaterally negotiated. Since ESP customers typically have the freedom to change retail service providers (unlike most IOU customers), the public disclosure of *wholesale* procurement costs does not “improve the value received by the customers of [ESPs] from RPS procurement.”⁹ Furthermore, because the Commission is expressly prohibited from regulating the “rates or terms and conditions of service offered by” an ESP,¹⁰ the disclosure of ESP

⁸ D.06-06-066 at 65.

⁹ *ALJ Ruling* at 6 (“Would the proposal as a whole (or the component being discussed) improve the value received by the customers of retail sellers from RPS procurement?”)

¹⁰ Pub. Util. Code § 394 (f).

procurement contract costs does not “contribute to improved decision-making by the Commission”¹¹ nor “contribute to the long-term stability of the RPS market.”¹²

In stark contrast, requiring disclosure of ESPs’ RPS procurement costs would lessen the “appropriate protection to information for which there is a legitimate need for confidentiality.”¹³ Procurement cost information is among an ESP’s most market sensitive information. The disclosure of this type of information has competitive implications for ESPs with respect to negotiating wholesale procurement contracts (RPS suppliers will know what an ESP has previously paid for RPS products), as well as competing for customers with other retail sellers.

In addition, disclosing RPS procurement cost information could undermine the commercial relationship between an ESP and its customers. While the disclosure of RPS procurement cost information may not be a concern for an IOU that provides service pursuant to tariff rates, it would completely change the bilateral negotiation process between an ESP and its customer. CPA is not aware of any comparable competitive market where access to a supplier’s cost information is administratively mandated.

E. Preliminary Staff Proposal on Costs of RPS Procurement Contracts

2. Annual information on total RPS procurement costs incurred by each retail seller in any prior year is public. [Matrix Section VII.F, VII.G]

For the reasons discussed above, CPA opposes any changes to the RPS confidentiality rules that would require public disclosure of ESPs’ procurement costs.

¹¹ *ALJ Ruling* at 5 (“Would the proposal as a whole (or the component being discussed) contribute to improved decision-making by the Commission?”)

¹² *ALJ Ruling* at 6 (“Would the proposal as a whole (or the component being discussed) contribute to the long-term stability of the RPS market?”)

¹³ *ALJ Ruling* at 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?”)

3. **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. [Matrix Section II.B.4]**

For the reasons discussed above, CPA opposes any changes to the RPS confidentiality rules that would require public disclosure of ESPs' procurement costs.

F. Preliminary Staff Proposal: Commission Review of RPS Procurement Contracts; Planning Requirements

8. **The following terms of RPS procurement contracts of ESPs and CCAs are publicly available 30 days after deliveries (energy and/or RECs) begin under the contract:**

- price (see section 2, above);
- counterparty;
- resource type;
- technology;
- location;
- capacity (MW);
- procurement (MW, or RECs if REC-only);
- delivery point;
- vintage;
- length of contract;
- contracted and forecasted online date; and
- WECC Bus ID where project is or will be interconnected.

Any other contract information is public three years after contract execution or upon contract expiration, whichever comes first. [Matrix Section VII.G; ESP Matrix Section I.C.]

For the reasons discussed above, CPA opposes any changes to the RPS confidentiality rules that would require public disclosure of ESPs' procurement costs.

III. CONCLUSION

CPA supports many of the guiding principles ensuring the Commission's practices provide for meaningful public participation and open decision-making. At the same time, the Commission must also continue the deliberative path that it has followed in the past by establishing fair and thoughtful confidentiality rules and procedures. In doing so, the

