

**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)

**POWEREX CORP. COMMENTS 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 ALJ Simon's email ruling of July 16, 2013 extending the time to file comments until August 5, 2013, Powerex Corp. ("Powerex") hereby submits these comments. Powerex's comments are limited to those portions of the Preliminary Staff Proposal recommending public disclosure of the prices and terms of ESP RPS procurement contracts.

I. COMMENTS

The Preliminary Staff Proposal recommends the following:

1. 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.¹

2. 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;
- 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.²

The rationale provided for the public disclosure of such information includes that: the general public has an interest in RPS costs overall; the disclosure of prices of all RPS procurement contracts provides information that the Commission and market participants could use to make more effective and accurate cost comparisons among different types of resources and project designs; the likelihood that the disclosure of the price of any individual contract would have a significant near-term effect on the statewide RPS market is slight; and ESPs are

¹ Preliminary Staff Proposal, Section 5.D.4.

² Preliminary Staff Proposal, Section 5.F.8.

subject to the same RPS terms and conditions applicable to an electrical corporation.

Powerex believes that the Preliminary Staff Proposal components pertaining to the disclosure of the prices and terms of ESP RPS procurement contracts would not: (i) improve the value received by the customers of retail sellers from RPS procurement, (ii) contribute to the long-term stability of the RPS market, or (iii) provide appropriate protection to information for which there is a legitimate need for confidentiality, and would raise legal issues with regard to the Commission's authority over ESPs. Therefore, Powerex believes these specific components of the Preliminary Staff Proposal do not meet the Guiding Principles set forth in the ALJ Ruling that the confidentiality rules should "respond to and support robust development of the RPS market" and "maintain an appropriate balance between public availability of information and protection of legitimately confidential material."³

As a willing supplier in California's competitive RPS market, Powerex believes in the principles of competition. However, revealing contract prices and terms potentially shortly after contract execution may actually have the effect of limiting competition. When a supplier submits a bona fide bid for RPS supply, price will be dependent on a number of factors, including, but not limited to, prevailing market conditions, the type and nature of a supplier's RPS-compliant portfolio and transmission positions, the relationship a supplier may have with a customer, preexisting supply commitments and alternate supply opportunities both inside California and elsewhere within the WECC, and the credit position of a customer. Particularly in the short-term market, contract pricing will have very little to do with, for example, building new generation using various types of resources and project designs. Due to these various factors, contract prices do not in and of themselves provide any obvious guidance on a supplier's

³ ALJ Ruling, pp. 7-8.

mentality in submitting a bid and indeed might prevent a supplier from participating in the California RPS market for fear it might damage pre-existing California supply relationships inside and outside the RPS market or even supply relationships outside of California. Therefore, an unintended consequence of public disclosure of the prices and terms of ESP RPS procurement contracts could be that California RPS supply competition would be reduced.

Based on the foregoing, Powerex disagrees with Staff's rationale that the disclosure of individual contract prices and terms would have a negligible effect on the statewide RPS market, and believes that the disclosure of the prices and terms of ESP RPS procurement contracts would not provide appropriate protection to information for which there is a legitimate need for confidentiality and could negatively impact the value received by the customers of retail sellers from RPS procurement, the long-term stability of the RPS market, and the general public interest in RPS costs overall. Moreover, because, as explained above, contract prices reflect a variety of factors, including factors specific to individual customers, the disclosure of prices for ESP RPS procurement contracts will actually provide very little useful information that the Commission and market participants could use to make more effective and accurate cost comparisons among different types of resources and project designs. In addition, requiring disclosure of the prices and terms of ESP RPS procurement contracts would provide very little useful information that the Commission could use to make more effective and accurate cost comparisons among different types of resources and project designs because the Commission does not have authority over the procurement costs and rates of ESPs as it does over the procurement costs and rates of investor-owned utilities (IOUs).

Powerex disagrees with Staff's rationale that the prices and terms of ESP RPS procurement contracts should be disclosed simply because ESPs are subject to the same RPS

terms and conditions applicable to an electrical corporation. The ALJ Ruling acknowledges that ESPs and IOUs are not similarly situated in all respects. For example, the ALJ Ruling states that “the Commission does not approve contracts of ESPs or CCAs”⁴ and that “price disclosure is not a valuable element for Commission decision-making if an RPS contract does not require Commission approval.”⁵ Commission precedent also supports the position that “in exercising its responsibility to protect ratepayers from unreasonable costs, the Commission may consider imposing additional requirements on IOUs’ [RPS] contracts.”⁶

Unlike IOUs, ESPs are completely subject to the competitive market and do not receive the benefits of cost and rate regulation, such as Commission-approved cost recovery of RPS procurement contracts through rates. Thus, in particular with regard to RPS procurement costs and prices, it is inappropriate to subject ESPs to terms and conditions similar to those applicable to IOUs. As described above, public disclosure of the prices and terms of ESP RPS procurement contracts could negatively impact the competitive RPS market in California. This would place a substantial burden on ESPs, which are completely subject to the competitive market, without providing corresponding benefits with regard to improving the value received by the customers of retail sellers from RPS procurement or contributing to the long-term stability of the RPS market.

Finally, the Preliminary Staff Proposal recommendations requiring disclosure of the prices and terms of ESP RPS procurement contracts raise legal issues regarding the Commission’s authority over ESPs. While, ESPs may be subject to the same RPS compliance

⁴ ALJ Ruling, p. 37.

⁵ ALJ Ruling, p. 25.

⁶ Decision (D.) 11-12-052, p. 50.

obligations as IOUs,⁷ the Commission does not otherwise have the authority to regulate the rates or terms and conditions of service offered by ESPs.⁸ In light of the Commission's limited authority over ESPs and the potential negative impacts on the competitive RPS market in California, the Commission should not accept the Preliminary Staff Proposal's recommendations requiring the disclosure of the prices and terms of ESP RPS procurement contracts.

II. CONCLUSION

Powerex appreciates the opportunity to provide these comments and looks forward to working with the Commission to implement RPS confidentiality rules that will ensure the continued development of an efficient and effective competitive RPS market in California.

Respectfully submitted this 5th day of August, 2013 at San Francisco, California.

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By /s/ Suzy Hong
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⁷ Public Utilities Code section 399.12(j)(3).

⁸ Public Utilities Code section 394(f).

VERIFICATION

I am an attorney for Powerex Corp. (“Powerex”) in this matter. Powerex is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission’s Rules of Practice and Procedure, I am submitting this verification on behalf of Powerex for that reason. I have read the attached “Powerex Corp. Comments on Administrative Law Judge’s Ruling Requesting Comments on Preliminary Staff Proposal to Clarify and Improve Confidentiality Rules for the Renewables Portfolio Standard Program,” dated August 5, 2013. I am informed and believe, and on that ground allege, that the matters stated in this document are true.

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

Executed on this 5th day of August, 2013, at San Francisco, California.

/s/ Suzy Hong

Suzy Hong