

**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)

**MOTION TO FILE UNDER SEAL THE CONFIDENTIAL VERSION OF  
2014 RENEWABLES PORTFOLIO STANDARD PROCUREMENT  
PLAN OF 3 PHASES RENEWABLES, LLC**

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July 14, 2014

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Pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure and in accordance with D.06-06-006 and D.08-04-023, 3 Phases Renewables, LLC (“3 Phases”) hereby moves for leave to file under seal the confidential version of its 2014 Renewables Portfolio Standard Procurement Plan (“RPS Plan”).<sup>1</sup>

In D.06-06-066, the Commission adopted rules governing the confidentiality of certain categories of electric procurement data that are routinely submitted to the Commission by investor owned utilities (“IOUs”) and electric service providers (“ESPs”). In the same decision, the Commission adopted two “matrices”—one for IOU data (the “IOU Matrix”), and another one for ESP data (the “ESP Matrix”)—specifying the confidential treatment to be afforded to the data specified in the applicable matrix.

In D.08-04-023, the Commission further clarified the categories of data that are eligible for confidential treatment under D.06-06-066 and made corresponding modifications to the ESP

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<sup>1</sup> A hard copy of the confidential version of 3 Phases’ RPS Plan was tendered to the Docket Office under seal on June 11, 2014.

Matrix.<sup>2</sup> D.08-04-023 also provided that where “[a] party files a pleading in a formal proceeding, including data of the type addressed in the Matrices to D.06-06-066, and seeks confidential treatment of that data,” the party is required to file a motion that complies with the requirements of Rule 11.4 and meets the five required showings specified in Ordering Paragraph 2 of D.06-06-066, which are:

1. That the material constitutes a particular type of data listed in the Matrix;
2. The category or categories in the Matrix to which the data correspond;
3. That the submitting party is complying with the limitations on confidentiality specified in the Matrix for that type of data;
4. That the information is not already public; and
5. That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

On June 11, 2014, 3 Phases filed and served the public version of its RPS Plan. To the extent data in 3 Phases’ RPS Plan are covered by one or more of the ESP matrix data categories, such data are eligible for the corresponding confidential treatment specified in the ESP Matrix.<sup>3</sup> In addition, the Commission has previously determined that data that does not fall within a matrix data category but which “consists of information from which (Matrix) information may be easily derived” is eligible for the corresponding confidential treatment specified in the matrix.<sup>4</sup>

Certain data contained in the RPS Report, as specified in the table below, is eligible for confidential treatment under the provisions of D.06-06-066 and the ESP Matrix, as modified by D.08-04-023, and the Commission is obligated to protect the confidentiality of data so as to

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<sup>2</sup> See D.08-04-023, *mimeo*, pp. 11-19 and Appendix B.

<sup>3</sup> See D.06-06-066, *mimeo*, p. 23 and Conclusion of Law 6.

<sup>4</sup> See, e.g., R.06-05-027, *Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s April 3, 2007 Motion to File Data Under Seal* (May 4, 2007), *mimeo.*, p. 2.

avoid material harm to 3 Phases and its customers. The data which 3 Phases requests the Commission keep confidential are either (a) substantially the same as the data set forth in 3 Phases' 2013 RPS Plan for which 3 Phases moved and the Commission granted confidential treatment in D.13-11-024, or (b) data that the Energy Division has are designated as being eligible for confidential treatment.

3 Phases seeks confidential treatment for its prior year's retail sales, current year retail sales, and the first three years of its forecast retail sales, as well as certain RPS-eligible procurement data that could be used to derive such information. Generally speaking, such data are either expressly eligible for confidential treatment under the ESP Matrix or, due to the fact that 3 Phases does not own or control the output of any generation facilities and it generally procures the energy required to meet the demand of its retail customers through short-term transactions, the data could readily be used to derive 3 Phases' "net short" for any given year (which is essentially equivalent to its total retail sales in that year minus any RPS procurement), or could be used to readily derive 3 Phases' RPS "net short" for the current compliance period (which is essentially equivalent to its RPS procurement quantity (MWh), as derived from its actual and forecast retail sales, minus any reported RPS procurement already performed in the applicable period and any excess RPS procurement carried over from a previous compliance period).

In light of the above, and in accordance with the aforesaid requirements, 3 Phases hereby affirms that the data specified in the table below are either Matrix data or consist of information from which Matrix data may be easily derived. (The cell numbers listed in the table refer to the cells in the Excel version of the RNS Report template.)

**TABLE OF CONFIDENTIAL DATA**

| <b>Description of Data</b>                 | <b>Spreadsheet Location</b>                                   | <b>Matrix Category</b> | <b>Explanation</b>  |
|--|---|------------------------|---|
| <b>Annual Retail Sales (MWh)</b>           | RNS Report cells I6 through N6                                | I.A and I.B            | Because ESP procures nearly if not all of its energy requirements for a given year through short-term transactions made shortly before and during that year ESP's "net short" for any given year is nearly if not identical with its annual retail sales in that year.  |
| <b>RPS Procurement Targets (MWh)</b>       | RNS Report cells I8 through N8, and I10 through N10           | I.A and I.B            | Because the ESP's Procurement Quantity Targets ("PQTs") and Procurement Quantity Requirements ("PQRs") for a given compliance period are derived from its annual retail sales during that compliance period using a published formula, disclosure of its PQT and PQR data (MWh) would reveal its annual retail sales. |
| <b>RPS-Eligible Procurement Data (MWh)</b> | RNS Report cells I12 through N12, and I18-I25 through N18-N25 | I.A and I.B            | Disclosure of ESP's procurement/supply data (MWh) would reveal its PQT and PQR data (MWh), which in turn would reveal ESP's annual retail sales.  |

In addition, 3 Phases requests confidential treatment for the RPS-related procurement banking data and derivative information specified by the Energy Division as set forth in the RNS Report cells with gray-shading.

3 Phases affirms that the data for which it is seeking confidentiality treatment are not already public, and that the redacted data could be made public without the risk of harm to ESP and its customers if and only if the data were aggregated with that of all electric service providers.

Respectfully submitted,



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Attorney for

**3 PHASES RENEWABLES, LLC**

July 14, 2014

## VERIFICATION

I, Gregory S. G. Klatt, counsel for 3 Phases Renewables, LLC, am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing Motion for Leave to File Under Seal 2014 Renewables Portfolio Standard Procurement Plan filed in Rulemaking 11-05-005 on July 8, 2014, are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

Executed on July 14, 2014, at Woodland Hills, California.



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**PROPOSED ORDER**

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, and in accordance with Decision (D.) 06-06-006 and D.08-04-023, 3 Phases Renewables, LLC ("3 Phases"), a registered electric service provider ("ESP"), filed a Motion on July 8, 2014, for leave to file under seal the confidential version of 3 Phases' 2014 Renewables Portfolio Standard Procurement Plan ("RPS Plan") that was filed on June 11, 2014. The Motion requests confidential treatment of specified data in the RPS Plan.

The data for which 3 Phases requests confidential treatment are protected under the ESP Matrix adopted in D.06-06-066, as modified in D.08-04-023. In addition, the Motion complies with the limitations on confidentiality specified in the ESP Matrix, and the data in question are not already public. 3 Phases further claims that the data can be made public without risking material harm to it and its customers only if the data are aggregated with that of all electric service providers.

Therefore, it is ordered that:

1. The confidential data contained in 3 Phases' RPS Plan shall remain sealed and is not to be disclosed to anyone other than Commission staff, the Assigned Commissioner, the assigned Administrative Law Judge ("ALJ") or an ALJ designated to decide this motion.



2. Further proceedings, if any, held with respect to matters contained in the confidential data shall be conducted in a manner the assigned ALJ deems reasonably necessary to protect the confidentiality of the data described herein;

3. Non-market participants may request access to the confidential information pursuant to applicable rules; and

4. All additional documentary evidence in this proceeding that addresses or relates to the confidential data must be treated in the confidential manner described in paragraphs 1 and 2, above.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Administrative Law Judge