

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewable Portfolio Standard
Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON PRELIMINARY STAFF PROPOSAL TO CLARIFY AND IMPROVE
CONFIDENTIALITY RULES FOR THE RENEWABLES PORTFOLIO
STANDARD PROGRAM**

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I. INTRODUCTION

Pursuant to California Public Utilities Commission (Commission) Rules of Practice and Procedure 14.3, the Division of Ratepayer Advocates (DRA) respectfully submits the following reply comments to parties' opening comments on the June 1, 2013 *Administrative Law Judge's Ruling Requesting Comments on Preliminary Staff Proposal to Clarify and Improve Confidentiality Rules for the Renewables Portfolio Standard (RPS) Program* (staff proposal or proposal).

DRA continues to support the proposal's guiding principles of robust RPS market development and transparency.¹ However, DRA's primary goal is to ensure that any amendments to the RPS program's confidentiality rules do not harm ratepayers. Several other parties have expressed this same concern.² Thus, DRA will use its reply comments to discuss its support for:

- Several parties' recommendation that any revisions to the confidentiality rules should be undertaken in a separate rulemaking including all procurement areas;³
- PG&E's proposal to add an additional guiding principle that the confidentiality rules will protect ratepayers from market manipulation and other harm that can arise from the release of market sensitive information;⁴ and
- PG&E's request that the Commission harmonize its confidentiality rules regarding greenhouse gas (GHG) emissions with the California Air Resources Board's (CARB) rules.⁵

¹ Staff proposal, issued July 1, 2013 at 7-8.

² Pacific Gas & Electric Company's (PG&E) Opening Comments at 5; Independent Energy Producers Opening Comments at 7; L. Jan Reid Opening Comments, at 10; San Diego Gas & Electric Company's (SDG&E) Opening Comments, at 9; Southern California Edison Company's (SCE) Opening Comments, at 8.

³ PG&E Opening Comments at 2; SCE Opening Comments at 7; Center for Energy Efficiency and Renewable Technologies' (CEERT) Opening Comments at 4-5.

⁴ PG&E Opening Comments at 5.

⁵ PG&E Opening Comments at 17-18.

II. DISCUSSION

A. DRA agrees with the proposal to re-evaluate the confidentiality rules in a separate proceeding including all procurement areas.

Decision (D.) 06-06-066 was the culmination of a comprehensive rulemaking that established the confidentiality rules for all procurement information. Determining which data are market sensitive and therefore in need of confidential treatment was based on at least 13 months of work, including stakeholders' comments, five days of hearings and full briefing.⁶ Like the Energy Division Staff in its current proposal, in D.06-06-066, the Commission recognized that "greater public access should be provided for procurement documents relating to the RPS program because of the public interest aspects of the program."⁷ In D.06-06-006, the Commission also recognized that to prevent market manipulation, certain data must be kept confidential.⁸ As noted in the staff proposal, under D.06-06-066, the public versions of Energy Division's draft resolutions do not reveal the price of a proposed contract. A contract's price "currently becomes publicly available three years after the commercial online date of the generating facility."⁹ The Energy Division staff proposal revises the confidentiality rules only for the RPS program, generally making more information public in a shorter amount of time. For example, staff proposes to make the price of RPS procurement contracts that are approved by resolution publicly disclosed in the draft resolution and in the final resolution adopted by the Commission.¹⁰

The record in this proceeding is insufficient to determine how revisions to the confidentiality rules for the RPS will affect ratepayers and the RPS market. As SDG&E points out, parties have had only five weeks to consider the staff proposal, in contrast to the 13 months taken to develop the rules adopted in D.06-06-066.¹¹ Without a well-developed record including

⁶ See D.06-06-066, as modified by D.07-05-032 at 7.

⁷ Id. at 4.

⁸ Id. at 18.

⁹ Staff Proposal at 19.

¹⁰ Id at 20.

¹¹ SDG&E Opening Comments at 5.

stakeholder participation that fully considers the impact of revising the RPS rules on ratepayers, DRA cannot support revisions to the confidentiality rules. DRA joins PG&E, SCE and CEERT in recommending that the Commission open a separate rulemaking to consider revisions to D. 06-06-066. Further, as PG&E and SCE note, the proposed revisions to the confidentiality rules will extend beyond the confines of the RPS program into all procurement areas.¹² Thus, DRA recommends that the separate rulemaking consider revised confidentiality rules for all procurement. Finally, any proceeding to revise the RPS confidentiality rules should answer at least these questions:

1. What is a mature RPS market?
2. Is the renewable market, or are portions of the renewable market, “mature”?
3. How has the California RPS market changed since D.06-06-066 that merits revising the RPS confidentiality rules?
4. What quantitative and qualitative impact, both harmful and beneficial, will the proposed confidentiality rule revisions have on the current and future RPS market, ratepayers, and other electricity procurement areas?
5. What alternatives to revising the RPS confidentiality rules will meet the staff proposal’s goals?
6. What revisions, if any, are appropriate to make to the current confidentiality rules, including RPS confidentiality rules, given the evidentiary record on the above points?

B. DRA supports PG&E’s proposal to add an additional guiding principle to the staff proposal explicitly protecting ratepayers from any harm caused by the release of market sensitive information.

Even if the Commission decides not to open a separate proceeding to revise D. 06-06-066, it should adopt PG&E’s proposal to add a sixth guiding principle to the staff proposal:

Confidentiality rules should ensure that consumers are protected from market manipulation and other harm that can arise if market sensitive information is released.¹³

¹² PG&E Opening Comments at 2, SCE Opening Comments at 7.

¹³ PG&E Opening Comments at 5.

The Staff Proposal’s guiding principles aspire to support a robust RPS market while providing

- customers with information about how retail sellers are meeting their RPS obligations,
- the California Independent System Operator (CAISO) with information necessary for development of new transmission, and
- the Commission with the RPS data it needs to coordinate work with other agencies.

Guiding Principle 5 seeks to balance the public availability of information with “protection of legitimately confidential material.”¹⁴ But, as PG&E observes, none of the guiding principles explicitly protects ratepayers from market manipulation and other harm that may arise from the release of market sensitive information.¹⁵ Transparency, RPS market development, and interagency coordination should not come at the ratepayers’ expense. While the proposed sixth principle should not be taken to mean that release of information will automatically harm consumers, it does highlight the need for a comprehensive proceeding to fully evaluate the effects of the release of market sensitive information on ratepayers. At the very least, if a party can show ratepayer harm, sensitive information should not be released.

C. DRA supports PG&E’s request that the Commission harmonize its GHG emissions confidentiality rules with CARB’s confidentiality rules.

DRA agrees with PG&E that any public disclosure and reporting policy related to information pertaining to emissions associated with RPS procurement contracts align with the structures currently in place at the California Air Resources Board (CARB) to prevent administrative complications and to minimize difficulties for complying entities and regulators.¹⁶ The disclosure of GHG data is not central to the staff proposal’s primary goals of creating a robust RPS market, making RPS compliance information available to consumers and other agencies, and achieving greater transparency.¹⁷ While DRA supports the proposal’s intent to increase transparency, the public release of certain information can facilitate market

¹⁴ Staff Proposal at 8.

¹⁵ PG&E Opening Comments at 5.

¹⁶ PG&E Opening Comments at 17.

¹⁷ Staff proposal, issued July 1, 2013. pg 7-8.

manipulation and create conflicts of interest in the allowance trading process.¹⁸ If the Commission releases emissions data associated with RPS contracts before CARB does, then an entity's negotiating position for compliance instruments in the cap-and-trade market may be adversely impacted. Releasing emissions data associated with RPS procurement contracts could disclose individual entities' short or long positions with respect to compliance instruments going into CARB's auctions or other procurement venues, such as bilateral negotiations or investor-owned utility request for offers.¹⁹ This could potentially undermine the safeguards CARB has in place to prevent market manipulation.²⁰ CARB does not share emissions data information until all participants' emissions have been verified, reported, realized, and retired to prevent this potential manipulation from occurring.²¹

Furthermore, this information is made publicly available on an annual basis after it has been verified and reported at CARB.²² Applying a different confidentiality policy would frustrate the reporting and verification process CARB has in place to prevent market manipulation and conflicts of interest. The Commission has indicated a preference to closely mirror and parallel CARB's GHG methodologies and policies to minimize difficulties for industries and regulators as well as to prevent administrative complications.²³ Thus, the Commission should closely align its policy structure to that currently in place at CARB.

III. CONCLUSION

DRA requests that the Commission institute a separate rulemaking to consider revisions to D.06-06-066 for all procurement areas, not only the RPS program. Among the guiding principles of this rulemaking should be protecting ratepayers from any harm caused by the release of market sensitive information. Finally, the rulemaking should incorporate PG&E's

¹⁸ See California Health and Safety Code sections 38500 et seq. and http://www.arb.ca.gov/cc/reporting/ghg-rep/reported_data/ghg-reports.htm.

¹⁹ Phone conversation with Rajinder Sahota, California Air Resources Board on August 15, 2013.

²⁰ Id.

²¹ See CARB webpage on Verification of GHG Emissions Data Reports at <http://www.arb.ca.gov/cc/reporting/ghg-ver/ghg-ver.htm>

²² Id.

²³ See D.12-12-033 and Staff Proposal for Greenhouse Gas Allowance Revenue Allocation Methodologies for Emissions Intensive & Trade Exposed Entities and Small Businesses.

proposal that the Commission harmonize its confidentiality rules for GHG information disclosure with CARB's confidentiality rules.

Respectfully submitted,

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VERIFICATION

I, Iryna A. Kwasny, am an attorney for the Division of Ratepayer Advocates which is a party herein, and am authorized to make this verification on DRA's behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein 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, at San Francisco, California.

/s/ IRYNA A. KWASNY
IRYNA A. KWASNY