BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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| Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program. | Rulemaking 11-05-005<br>(Filed May 5, 2011) |

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


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# I. INTRODUCTION

Pursuant to 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 Program* (staff proposal or proposal), the Division of Ratepayer Advocates (DRA) respectfully submits the following opening comments on the Energy Division staff proposal.

The staff proposal seeks to reform the California Public Utilities Commission's (Commission) confidentiality rules to increase and improve public access to California Renewables Portfolio Standard (RPS) data.[1] DRA supports the staff proposal's intent to increase transparency in response to the significant public interest in the RPS procurement process. However, DRA recommends the following modifications and clarifications to the staff proposal to facilitate market-driven procurement and preserve ratepayer value:

- The Commission should maintain price confidentiality in cases where disclosure may impact the price of procurement;
- The Commission should clarify that it will not disclose RPS generation forecast assumptions, including project viability and failure assessment assumptions, at a project-specific level; and
- The Commission should clarify that a retail seller's future procurement projections will continue to be reported, even after the compliance reporting tool is redesigned to provide a self-contained report of past compliance performance.

# II. DISCUSSION

## A. Price Disclosure Should be Limited to Technologies in Competitive Markets, and Restricted for Technologies At Risk for Market Manipulation Due to Few Providers Relative to the Technology's Mandated Level of Procurement

Currently, all information pertaining to a generation facility becomes publicly available three years after its commercial operation date (COD) through public release of the facility's contract.[2] This date may be up to 12 years after the Commission approves the contract. Energy Division staff proposes to publicly disclose the contract price in the Commission's draft and final

[1] Staff Proposal, p. 2.

[2] Id., p. 19.

resolutions disposing of Tier 3 advice letters and in the advice letter itself for advice letters not requiring Commission approval via resolution.[3] In both cases, the staff proposal indicates the participation of many developers in the RPS market as a sufficient safeguard against the effect of price disclosure on the RPS market or prices.[4] DRA notes that the staff proposal did not describe the criteria for a mature market, and requests clarification of this concept.

DRA understands a competitive market to be a market in which a large number of sellers offer their best price and a buyer chooses the offer that best fits its needs. DRA generally agrees that most renewable technologies are offered in a competitive market. However, a competitive market may not yet exist for developing technologies and price disclosure for technologies which have few developers may lead to market manipulation which could increase prices for future projects.

DRA is specifically concerned with bioenergy[5]. Market manipulation may arise from the interaction of price disclosure and the mandate that 20 percent of RPS-eligible procurement be obtained from biomass,[6] because there are relatively few bioenergy developers compared with developers for other renewable technologies.[7] Price disclosure, combined with other publicly available information, may enable bioenergy developers to gauge their market power and to price bids accordingly, rather than pricing bids competitively. Such market manipulation would result in high prices for ratepayers as the IOUs potentially accept those high bids in order to meet the 20 percent bioenergy mandate. Thus, DRA recommends that where (1) competitive markets are non-existent and (2) contract price disclosure may lead to market manipulation or a higher cost of procurement, the contract price be kept confidential. As the Commission stated in Decision (D.) 06-06-066:

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[3] Id., p. 20, 23.

[4] Id., p. 20-22, 23.

[5] Bioenergy encompasses a range of technologies/fuels, including wastewater treatment plant biogas, low solids green waste biogas, dairy cattle manure biogas, agricultural residues, and high solids food waste biomass.

[6] Executive Order S-06-06. Available at http://www.arb.ca.gov/fuels/altfuels/incentives/eos0606.pdf

[7] This is, in part, why the Renewable Auction Mechanism (RAM) procurement program reduced the amount of baseload generation IOUs had to procure in meeting their RAM procurement obligations, per p. 7 of Resolution E-4489: "far fewer baseload and non-peaking projects participated in PG&E's first RAM auction than did peaking projects, despite the same availability of capacity for projects in each category."

> While we accept that the release of more information on utility procurement could lead to more efficient investment decisions, we must guard against the release of information that can lead to more opportunities for market manipulation. We seek to strike a balance between the rights of the public to open decision making, particularly with regard to the expenditure of ratepayer money, and the realization of market efficiencies through better information flow on the one hand, and the prevention of market manipulation on the other.[8]

Additionally, DRA requests Energy Division staff to clarify the concept of a mature market.

### B. Failure Assessment Assumptions and Aggregate Scores Should be Public But Individual Project's Project Viability Calculator (PVC) Scores Or Other Failure Assessments Should Not Be Public

Staff proposes to make project viability and failure assessment assumptions public because: (1) RPS procurement forecasts are used in the planning activities of other agencies, and (2) streamlining procurement planning review at the Commission requires better availability of underlying assumptions. [9]

DRA agrees that the utility's failure assessment assumptions for its renewable portfolio should be released to the public and be the subject of public debate, as long as only aggregate failure assessment assumptions are released. Stakeholders' review and discussion should help standardize the assumptions and assure robust supporting analysis. DRA, however, opposes releasing each project's individual failure assessment, whether in the form of its Project Viability Calculator (PVC) score or another assessment that the utility or CPUC performs. 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. The PVC is a screening tool used by utilities and the Commission to compare different projects; it is not an evaluation of a project's merit.[10] The Commission should ensure that the PVC does not become a tool that outside entities use, potentially incorrectly, to predict project success or estimate the project's value for financing or other purposes.

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[8] D.06-06-066, Section IV(B)(2). Available at http://docs.cpuc.ca.gov/PublishedDocs/PUBLISHED/FINAL_DECISION/57772-03.htm#P193_25009

[9] Staff Proposal, p. 35.

[10] CPUC's Energy Division, http://www.cpuc.ca.gov/PUC/energy/Renewables/procurement.htm.

Individual project failure assessments besides the PVC are also sometimes used by the utilities. Some utilities develop their own estimate of a project's success to calculate the over-procurement that will be necessary to comply with RPS goals. For example, a utility might "de-rate" a project's capacity by its predicted success rate (e.g., a 100 MW project in development with a 70% estimated success rate will "count" as 70 MW in the portfolio for procurement planning purposes). This measure should not affect how other market participants or financing entities evaluate the project. If a project gets a relatively low rating because it has not yet secured financing and then financing entities see that rating, it will likely not get financing and fail to be developed. This type of individual assessment should also not be made public.

Releasing a utility's aggregate failure assumptions and the analysis behind it for its entire portfolio or broken out by project categories where there are more than two projects will inform the public debate about failure assumptions and public entities who perform procurement or transmission planning. However, releasing an individual project's failure assumption or PVC score may be harmful and unfair to that project's development.

### C. The Commission Should Clarify in the Preliminary Staff Proposal on RPS Compliance Reporting that Utilities are Still Required to File Future Compliance Reports

DRA supports the staff's recommendation to make past compliance reports public because release of that information furthers the Commission's long-standing position that "due to the strong public interest in RPS," it will provide greater "public access to RPS data than other data."[11] Nonetheless, DRA recommends that the Commission clarify[12] that the IOUs are still required to file future compliance reports. These reports are crucial in assessing future procurement needed to achieve the 33 percent RPS goal. In addition, intervenors need this information in order to participate effectively in Commission proceedings. Compliance reports provide:

- Detailed information on many components of an IOU's RPS plan, including an IOU's current renewable procurement position and its ability to increase future procurement. These two components directly affect product value to ratepayers because ratepayers bear the cost of an IOU's RPS procurement as the IOUs fulfill their 33 percent RPS obligation;

[11] D.06-06-066, p. 3

[12] Staff Proposal, p. 17

- A breakdown of future generation by year and by contract, information that is essential to the Commission in assessing future needs to meet the RPS target;
- Detailed information on the renewable portfolio mix that helps the Commission ensure that IOUs select the most cost-effective mix of renewable resources while achieving renewable energy deliveries of 33 percent by 2020; and
- Project Development Status Reports that give the Commission access to specific issues, such as project lead times, transmission issues, possible technology improvements, potential cost reductions, and other various factors that affect the state's ability to reach its RPS goals. The Commission uses this information to ensure that that an IOU's activity is in compliance with the law and that scarce ratepayer funds are prudently spent.

Compliance reports also advance the Commission's goal of using common data because the reported data is comparable between each utility.[13] Using common data provided by the IOUs allows the Commission to balance objectives from the renewables industry and intervenors in the RPS proceeding. Use of common data increases long-term program planning and efficiency, provides performance assessment and benefits, and improves how scarce ratepayer funds are spent. Finally, compliance reports provide valuable information to intervenors, which in turn, provide the Commission with arguments that contribute to the development of the record. The Commission should ensure adequate information is provided to intervenors to allow for a robust process, by making past compliance reports public and clarifying that utilities are still required to file future compliance reports.

## III. CONCLUSION

DRA requests that the Commission adopt its recommendations: maintain price confidentiality when publicizing a price could have an adverse impact on market competition or

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[13] Id., p. 45

future prices; clarify that IOUs will release aggregated, and not individual, failure assumption and PVC scores; and clarify that IOUs are still required to file future compliance reports.

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 2, 2013, at San Francisco, California.

*/s/* IRYNA A. KWASNY
IRYNA A. KWASNY