

Decision 09-12-020 December 17, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to implement Senate Bill No. 1488 (2004 Cal. Stats., Ch. 690 (Sept. 22, 2004)) relating to confidentiality of information.

Rulemaking 05-06-040
(Filed June 30, 2005)

**DECISION CLARIFYING THAT CERTAIN INFORMATION IS NOT
MARKET SENSITIVE IF RELEASED IN A SPECIFIED MANNER**

1. Introduction

This decision clarifies that certain information related to the Renewables Portfolio Standard (RPS) program, if aggregated appropriately, is not “market sensitive” as defined in Decision (D.) 06-06-066, as modified by D.07-05-032 (hereinafter D.06-06-066).¹ The information includes the capacity, location by bus bar and zone, and technology type of proposed renewable generation projects that have been short-listed in utility solicitations between 2003 and 2009, or identified for bilateral negotiations during the same time frame, and submitted to the Commission by Southern California Edison Company, Pacific Gas and

¹ As used in this decision, “aggregate” refers to the full range of data modification tools recognized in D.06-06-066 as available to facilitate disclosure of data while protecting market sensitive information, including aggregation, redaction, summarization, masking, or otherwise protecting the information in a manner that permits partial disclosure. See, e.g., D.06-06-066, as modified by D.07-05-032 in Appendix A (App. A) at Ordering Paragraphs 2 and 8.

Electric Company, and San Diego Gas & Electric Company pursuant to the confidentiality procedures adopted in D.06-06-066.

This decision confirms that this information, when presented over a range of years, without identifying the bid prices, counter party names, solicitation year, or sponsoring utility, is not market sensitive and therefore should not be granted confidential treatment. This decision only applies to the short-list and bilateral contract data addressed here covering the period of the 2003 through 2009 solicitations. It does not modify any Commission rules or decisions, or change the manner in which RPS bid information will be treated on a going forward basis. The Commission will address additional releases of RPS data as appropriate, if and when it becomes necessary.

2. Background

The current renewable procurement process starts with the submittal by the investor-owned utilities (IOUs)² of their Annual Renewable Resource Procurement Plans to the Commission for approval. Once the plans are approved, the IOUs initiate a solicitation or “request for offers” (RFO) process for renewable resources. The IOUs issue their RFOs shortly after the Commission approves their procurement plans and allow three months for RFO responses. The IOUs then evaluate the bids, identify a short-list of parties to negotiate with, and begin to negotiate power purchase agreements (PPA) with those short-listed projects. Successful negotiations result in an IOU submitting a PPA to the Commission for approval, usually through the Advice Letter process. Once the

² The three largest IOUs, and the ones impacted here, are Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E).

Advice Letter and PPA are submitted to the Commission, the capacity, technology and location of the project become public information.³ The data for all of the short-listed projects in a solicitation do not become publicly available until the solicitation is closed, i.e., all negotiations have been concluded. Because many Renewables Portfolio Standard (RPS) solicitations currently remain open, the short-list data on projects without final PPAs remains designated as confidential. We issue this decision to clarify that the aggregate release of this short-list information for the years 2003 through 2009, without identifying the bid prices, counter party names, solicitation year, or sponsoring utility, is consistent with the provisions of Decision (D.) 06-06-066. This clarification also applies to bilateral contract information submitted to the Commission in the IOUs' RPS Project Development Status Reports or as finalized contracts during the same period covered by the 2003 to 2009 solicitations.

Because the Commission initiates this clarification on its own motion, upon request from the Commission Energy Division staff (Staff), a "draft" of a proposed decision was sent out for comment pursuant to an Assigned Commissioner's Ruling issued October 14, 2009. PG&E filed opening comments on October 26, 2009. SCE, SDG&E, and the Division of Ratepayer Advocates (DRA) filed reply comments on October 30, 2009. We respond to those comments below.

³ The bilateral contract process is similar, but without the seller participating in the utility's RFO process.

3. Discussion

A. The Commission's Confidentiality Rules

This Commission adopted D.06-06-066 to implement Senate Bill No. 1488 (SB 1488).⁴ SB 1488 required that the Commission examine its practices regarding confidential treatment of information to ensure meaningful public participation in its proceedings and open decision-making, while taking into account its obligations under Pub. Util. Code § 454.5(g) and § 583 to protect the confidentiality of certain information. D.06-06-066 recognized that in some instances confidential treatment of data may not only be allowed, but may be required in order to carry out the Commission's statutory and constitutional duties. The Commission reasoned, among other things, that confidentiality protections are essential to avoid a repetition of electric market manipulation. However, the Commission also recognized the need to have as transparent processes as possible.⁵ In balancing these competing interests, the Commission determined that only information that could have a material impact on a procuring party's market price for electricity would be protected.⁶ Additionally, due to the strong public interest in the RPS program, the Commission provided for greater public access to RPS data than other data.⁷

A "Matrix of Allowed Confidential Treatment" for IOU Data was developed as Attachment 1 to D.06-06-066 (Matrix). The Matrix identifies

⁴ Stats. 2004, Ch. 690.

⁵ See, e.g., D.06-06-066 as modified by D.07-05-032 in App. A at 2.

⁶ *Id.* at 4.

⁷ *Id.* ("Greater public access should be provided for procurement documents relating to the RPS program because of the public interest aspects of the program.").

categories of information to be treated as confidential. Matrix category VIII.A. – at issue here – provides a window of confidentiality protection for “[RPS] Bid information.” It protects as confidential for a specified period “participating bids, counter-party names, prices and quantities offered.” The Matrix provides that the “[t]otal number of projects and megawatts bid by resource type (e.g., fossil, wind, solar, hydro-electric, etc.) [are to be] public after final contracts submitted to CPUC for approval.” Thus, aggregate bid information from a specific solicitation is not made public until the solicitation is closed, i.e., all negotiations have concluded and the contracts are submitted to the Commission. This process reflects the understanding that the solicitation information is not market sensitive once negotiations have been concluded.

Until the solicitation is closed, information from the solicitation is made public on a piecemeal basis as PPAs are submitted for Commission approval. However, because negotiations remain pending for a large number of RPS solicitations, including solicitations from 2003, complete short-list data for many solicitations has not yet been made public.

B. The Data Is Not Market Sensitive If Released As Proposed By Staff

The standard set forth in D.06-06-066 is that “[w]here we find that the material is not ‘market sensitive,’ we require the data’s public disclosure.”⁸ “Market sensitive” information is defined as information that has “the potential, if released to market participants, to materially affect a buyer’s market price for electricity.”⁹

⁸ *Id.* at 44.

⁹ *Id.*

The short-list and bilateral contract data is market sensitive on an individualized basis and properly protected as confidential pursuant to D.06-06-066. This is especially so with regard to price information, and it is also so with regard to the information we propose to release here when that information is presented as data from a specific solicitation by a single utility, in a single year, particularly for more current years. However, when several years' data will be aggregated for release as proposed by Energy Division, with critical market-sensitive information withheld, the nature of the data changes. Release of several years of short-list and bilateral contract data in the aggregate - without identifying the bid prices, counter party names, solicitation year, or sponsoring utility - is consistent with D.06-06-066 which provides: "RPS information should be public to a greater extent than non-RPS data (except the price term in contracts, which may be confidential)."¹⁰ Energy Division proposes to release the data substantially in the form provided in the following example:

Generator ID	Technology Type	MW	Bus ID	Zone
P1	Solar	500	24701	East Riverside

In the data release, the "Bus ID" corresponds to a specific bus bar location as defined in the Transmission Expansion Planning Policy Committee (TEPPC) production simulation database.¹¹ The "Zone" will be a geographic area that is either a Competitive Renewable Energy Zone identified by the Renewable Energy Transmission Initiative (RETI),¹² or a larger geographic area, such as a

¹⁰ *Id.* at 64.

¹¹ Information about TEPPC is available at: <http://www.wecc.biz/Planning/TransmissionExpansion/Pages/default.aspx>.

¹² Information about RETI is available at: <http://www.energy.ca.gov/reti/>.

state. The generator identification number will be randomly assigned and have no relationship to contract status.

As shown in the example, no price information will be disclosed, nor will the specific location, proposed for a project, or any other contractual terms or conditions be disclosed. Further, the aggregate information released will include information on all projects with signed contracts, including contracts from bilateral negotiations, as well as all other short-listed projects and bilateral negotiations already reported by the IOUs in their RPS Project Development Status Reports. Aggregating the information in this way should preclude identification of those projects still in contract negotiations, except to the extent that such information is already public.

We note that much of the data Energy Division proposes to disclose here is already public. There is already significant industry knowledge about proposed projects, including capacity, technology, and location. In addition to publicly available contracts approved by this Commission, many proposed projects have permit applications pending with various state and federal agencies which disclose such information. State and regional renewable planning efforts have also documented, by technology type, the general locations sought by renewable developers.

Given the amount of information otherwise available to industry participants, disclosing, in aggregate form, the short-list data from the 2003-2009 solicitation years, combined with bilateral contract information for the same period, without identifying the bid prices, counter party names, solicitation year, or sponsoring utility, does not “have the potential, if released to market participants, to materially affect a buyer’s market price for electricity.” For this reason, we find the data, if released as proposed by Staff, not to be “market

sensitive” and we clarify that Staff may make it publicly available as soon as the 2009 solicitation information is available to include in the data release.

PG&E filed comments on the draft proposal stating that the information proposed to be released could be used by certain members of the public to identify specific projects under negotiation, potentially leading to higher energy costs through higher land or regulatory costs for project developers.¹³ PG&E proposed an alternative form of aggregation to address these concerns. PG&E also requested clarification about the manner in which the data will be released, and the impact of the proposal on future decisions regarding the release of the short-list data.

PG&E’s concern that certain members of the public will use the short-list information for negotiating leverage is too speculative to have the potential to materially affect the market price for electricity, and furthermore, does not comport with our definition of market sensitive, which is information that has “the potential, if released to *market participants*, to materially affect a buyer’s market price for electricity.”¹⁴ While “market participants” was not defined in D.06-06-066, potential land owners and government permitting agencies do not appear to be the type of market participants D.06-06-066 was concerned with.

SCE, DRA, and SDG&E filed reply comments in support of PG&E’s request for clarity. DRA recognized the value of the release of the short-list data consistent with the proposal and identified PG&E’s alternative proposal as

¹³ PG&E Opening Comments on Draft Proposed Decision, October 26, 2009, at 3.

¹⁴ D.06-06-066 as modified by D.07-05-032 in App. A at 44 (*italics added*).

“onerous.”¹⁵ DRA proposes that bilateral contracts under negotiation also be included in the data release.

This decision addresses many of these concerns and provides the clarity requested.

4. Comments on Proposed Decision

The proposed decision was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Joint opening comments were filed by PG&E, SCE, and SDG&E on December 3, 2009 (Joint Comments), and reply comments were filed by the California Independent System Operator Corporation (CAISO) on December 8, 2009.

The Joint Comments reflect four primary concerns with the proposed decision: (1) that the proposed decision errs because the methodology for releasing the information is not aggregation and the information released remains market sensitive; (2) that the proposed decision should apply equally to all retail sellers; (3) that the proposed decision should specify the source of the bilateral contract information to be released; and (4) that the proposed decision errs in how it defines “market sensitive.”

The first concern raised in the Joint Comments too narrowly construes the term “aggregation” as intended by this decision. Modifications have been made to clarify that the term “aggregation” is used in this decision to encompass the full range of data modifications available under D.06-06-066 to facilitate disclosure of information without releasing market sensitive information.

¹⁵ *Id.*

As to the IOUs' assertions that the data proposed to be released by this decision is market sensitive because of the inclusion of the bus bar location, the CAISO states: "The ISO does not believe that the bus bar ID locations associated with particular renewable technologies in the various renewable zones will lead to gaming and market manipulation described by the Joint Utilities."¹⁶

The CAISO clarifies:

A bus ID is *not* a geographic location about the specific location of the renewable projects. A bus ID is an electrical location that indicates the point where renewable energy is going to be delivered. Between the bus and the location of renewable projects, there are tie-lines of certain distance. ... To summarize, although a bus ID corresponds to a specific location of a substation, the bus ID does not indicate the site of the renewable project(s).¹⁷

For these reasons, among others, the examples of potential market manipulation that the IOUs claim will occur as a result of disclosure of the information have no merit.

As to the IOUs' second concern, they are correct that the decision should apply equally to IOUs and Electric Service Providers (ESPs). However, as a practical matter, no ESP data will be included in the data release because there is no similar ESP data available for the 2003 through 2009 solicitation years.

To address the IOUs' third concern, this decision has been modified to specify that the sources of the bilateral contract information to be released will be filed contracts and the IOUs' RPS Project Development Status Reports.

¹⁶ CAISO Reply Comments on Proposed Decision, December 8, 2009, at 4.

¹⁷ *Id.*

Clarifications have been made to address the IOUs' fourth concern, that the proposed decision errs in defining market sensitive.

5. Conclusion

For the reasons set forth herein, we find that disclosing in aggregate form the short-list bid data from the 2003-2009 solicitation years, combined with data from bilateral negotiations for the same period, without identifying the bid prices, counter party names, solicitation year, or sponsoring utility, does not "have the potential, if released to market participants, to materially affect a buyer's market price for electricity." Consequently, we find such data, when released in the manner proposed, not to be "market sensitive" and we authorize Staff to make it publicly available as soon as the 2009 solicitation information is available to include in the data release.

6. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Hallie Yacknin is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Data individually identifying proposed renewable generation projects that have been short-listed in utility solicitations or identified for bilateral negotiations is market sensitive and properly protected as confidential pursuant to D.06-06-066.

2. The capacity, location by bus bar and zone, and technology type of proposed renewable generation projects that have been short-listed in utility solicitations between 2003 and 2009, or identified for bilateral negotiations for the same period, when released in aggregate and without identifying the bid prices, counter party names, solicitation year, or sponsoring utility, is not market sensitive.

Conclusion of Law

The capacity, location by bus bar and zone, and technology type of proposed renewable generation projects that have been short-listed in utility solicitations between 2003 and 2009, or identified for bilateral negotiations for the same period, when released in the aggregate and without identifying the bid prices, counter party names, solicitation year, or sponsoring utility, should not be treated as confidential under D.06-06-066 because this information is not market sensitive if released in this manner.

O R D E R

IT IS ORDERED that:

1. The Commission's Energy Division staff is hereby authorized to disclose information regarding the capacity, technology, and location by bus bar and zone of all short-listed and bilaterally negotiated Renewables Portfolio Standard projects received from Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company for the period covering the 2003 through 2009 solicitations. Such disclosure shall be in aggregate, shall be done as soon as the 2009 solicitation information is available to include in the data release, and shall not identify the bid prices, counter party names, solicitation year, or sponsoring utility.

2. Rulemaking 05-06-040 remains open.

This order is effective today.

Dated December 17, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners