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**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)

**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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**ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON  
PRELIMINARY STAFF PROPOSAL TO CLARIFY AND IMPROVE  
CONFIDENTIALITY RULES FOR THE RENEWABLES PORTFOLIO  
STANDARD PROGRAM**

**1. Introduction**

This ruling seeks comments on an Energy Division staff proposal to make the rules related to confidentiality of information about compliance, reporting, procurement, and planning for the California renewables portfolio standard (RPS) more transparent, accessible, and consistent.<sup>1</sup> The staff proposal seeks to improve, expand, and formalize the processes for making information about the RPS program more generally available. This approach furthers the Commission's long-standing view that, "due to the strong public interest in RPS," it will provide "greater public access to RPS data than other data." (Decision (D.)06-06-066, at 3.)

**2. Background**

The appropriate treatment of information that may be or is claimed to be confidential is an important responsibility of the Commission. The Commission has various statutory obligations about confidentiality, including those set out in Pub. Util. Code § 454.5(g)<sup>2</sup> and § 583.<sup>3</sup> D.06-06-066, as modified by D.07-05-032

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<sup>1</sup> The RPS statute is codified at Pub. Util. Code § 399.11 et seq. All further references to sections are to the Public Utilities Code unless otherwise specified.

<sup>2</sup> Section 454.5(g) provides that:

The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are

*Footnote continued on next page*

and D.08-04-023, is the comprehensive expression of the Commission's policies with respect to the confidentiality of information related to electricity procurement. General Order (GO) 96-B includes procedures for claims of confidentiality of information in advice letters.<sup>4</sup> GO 66-C addresses the public availability of Commission records and documents. Recently adopted Resolution (Res.) L-436 (February 13, 2013) sets forth the Commission's policies about the public availability of safety-related information.

The RPS program, which mandates procurement of eligible renewable energy resources by retail sellers and publicly owned utilities (POUs) in California, has been the subject of much legislation and many decisions by the Commission.<sup>5</sup> Most recently, Senate Bill (SB) 2 (1X) (Simitian), stats. 2011, ch. 1 enacted a major overhaul of the RPS program. The Commission is implementing

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nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

<sup>3</sup> Section 583 provides that:

No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.

<sup>4</sup> See Section 9 of GO 96-B.

<sup>5</sup> Retail sellers include investor owned utilities (IOUs), electric service providers (ESPs), and community choice aggregators (CCAs). The Commission has jurisdiction, for RPS purposes, over retail sellers; it does not have jurisdiction over POUs. Pub. Util. Code §§ 399.12(j); 399.30(p).

the changes to the RPS program made by SB 2 (1X) through a series of decisions in this proceeding.<sup>6</sup>

### **3. Plan of this Ruling**

This ruling seeks party comment on a preliminary staff proposal on the development and/or refinement of RPS-specific rules and processes with respect to the confidentiality of a wide range of information relevant to the RPS program. The staff proposal is presented in sections, keyed to various aspects of the RPS program (compliance, reporting, procurement, and planning). Each proposal is accompanied by a brief rationale. The proposal also notes, where applicable, the elements of the current “Matrix” set out in Appendix 1 (IOUs) and Appendix 2 (ESPs) of D.06-06-066 that address topics taken up in the staff proposal.

The issues addressed by the staff proposal are complex and affect many aspects of the work of the Commission and the efforts of market participants and others interested in the RPS program. The preliminary staff proposal therefore does not include detailed proposed language, such as a red-lined version of the current Matrix. It is anticipated that, after considering the comments and reply comments in response to this ruling, staff will develop a final proposal, on which parties will have the opportunity to comment.<sup>7</sup> If the Commission adopts some

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<sup>6</sup> Thus far, decisions issued in this proceeding include D.11-12-020 (procurement quantity requirements); D.11-12-052 (portfolio content categories); D.12-05-035 as modified by D.13-01-091 (feed-in tariff); D.12-06-038 (initial compliance rules); D.12-11-016 (IOUs’ 2012 RPS procurement plans); D.13-05-034 (FiT standard contract). The Second Amended Scoping Memo and Ruling of Assigned Commissioner (January 9, 2013) sets out the scope of the balance of the proceeding.

<sup>7</sup> For purposes of this ruling, “parties” means the parties to three proceeding: this proceeding (R.11-05-005), the current long term procurement planning (LTPP)

*Footnote continued on next page*

or all of the elements of the staff proposal, it may also modify relevant parts of D.06-06-066, and/or D.07-05-032 and/or D.08-04-023.

#### **4. Comments**

This ruling does not pose specific questions about each staff proposal. Rather, commenters are asked to consider and comment on at least the following seven issues with respect to the preliminary staff proposal as a whole, and with respect to its components. Comments may cover additional issues, in accordance with the guidelines set out in this ruling.

1. Would the proposal as a whole (or the component being discussed) promote transparency and the public interest with respect to the RPS program? Why or why not? What changes would improve the proposal with respect to its impact on transparency and the public interest in the RPS program?
2. Would the proposal as a whole (or the component being discussed) contribute to improved decision-making by the Commission? Why or why not? What changes would improve the proposal with respect to its impact on improving decision-making about the RPS program at the Commission?
3. Would the proposal as a whole (or the component being discussed) contribute to improved coordination between the Commission and other agencies and organizations with respect to California's energy policy, procurement planning and/or transmission planning. Why or why not? What changes would improve the proposal with respect to

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proceeding (R. 12-03-014), and the now-closed confidentiality proceeding (R. 05-06-040), unless otherwise specified. This ruling is being sent to the service lists for all three proceedings. All comments and reply comments must be served on all three service lists.



its impact on improving coordination with other agencies about procurement and transmission planning?

4. Would the proposal as a whole (or the component being discussed) improve the value received by the customers of retail sellers from RPS procurement? Why or why not? What changes would improve the proposal with respect to the value to customers of retail sellers?
5. Would the proposal as a whole (or the component being discussed) contribute to the long-term stability of the RPS market? Why or why not? What changes would improve the proposal with respect to the long-term stability of the RPS market?
6. Would the proposal as a whole (or the component being discussed) provide appropriate protection to information for which there is a legitimate need for confidentiality? Why or why not? What changes would improve the proposal with respect to the protection of information for which there is a need for confidentiality?
7. What, if any, legal issues might exist with respect to the implementation of the proposal as a whole (or the component being discussed)? What changes if any, would improve the proposal with respect to reducing or eliminating legal issues regarding its implementation? What changes to the existing legal framework, if any, would reduce or eliminate the issues identified?

Comments should be addressed to each element of the staff proposal, and should be as specific and precise as possible. Comments should also include specific examples of transactions or commercial arrangements that are relevant to the argument being made. Legal arguments should be supported with specific citations. All comments should use publicly available materials. If the commenter believes that information that is not publicly available is important to its argument, it should identify (but not cite or include) the source of any

non-public information and specifically note which elements of its argument are based on or supported by the non-public information.

Comments should make proposals and provide interpretations that, if adopted by the Commission, would provide clear guidance to parties, RPS market participants, and Commission staff on the subjects being addressed. Parties may identify issues that are not addressed in preliminary staff proposal; commenters doing so should clearly explain the relevance of the additional issue(s).

Opening comments of not more than 50 pages addressing the issues set forth in this ruling may be filed and served not later than July 29, 2013. Reply comments of not more than 25 pages may be filed and served not later than August 20, 2013. It is not necessary to reproduce the sections being discussed in comments, so long as the section being addressed or topic being introduced is clearly identified, by topic or by section and subsection (e.g., E.2.) Parties are encouraged, but not required, to file and serve opening comments, in order to give all parties the best opportunity to respond to other parties' positions. Parties may, but are not required to, file comments jointly with other parties if doing so would not delay submission of the comments.

## **5. Preliminary Staff Proposal**

### **A. Guiding Principles**

These guiding principles provide a framework for the staff proposal. In evaluating and commenting on the staff proposal, parties should keep the guiding principles in mind.

1. Confidentiality rules should respond to and support robust development of the RPS market.

2. Confidentiality rules should allow customers of all retail sellers to obtain information about how retail sellers are meeting their RPS obligations.
3. Confidentiality rules should provide the greatest transparency of information possible in order to support planning for electric supply procurement and for the development of new transmission.
4. Confidentiality rules should allow the Commission to make the best use of information about the procurement of RPS-eligible resources, both in its own work and in coordinating work with other agencies and organizations.
5. Confidentiality rules should maintain an appropriate balance between public availability of information and protection of legitimately confidential material.

## **B. Proposal Background**

The market for RPS-eligible electricity is now more than a decade old, beginning with the Commission's instructions to utilities for interim procurement of renewable generation resources. (See, e.g., D.02-08-071.) D.03-06-071, the initial Commission decision implementing the RPS program that was created by Senate Bill (SB) 1078 (Sher) Stats. 2002, ch. 516, has been followed by more than 40 Commission decisions refining the program and implementing legislative changes to it.

The most recent and comprehensive legislative changes to the RPS program were enacted by SB 2 (1X). Most notably, the statute extends the statutory RPS procurement goal from 20% of retail sales of all California IOUs, ESPs, and CCAs by the end of 2010, to 33% of retail sales of IOUs, ESPs, CCAs and POUs by the end of 2020. SB 2 (1X) also modifies or changes many aspects of the RPS program. One significant change is that the time period over which RPS compliance is measured changes from annually to a series of multi-year

compliance periods through 2020.<sup>8</sup> Another is that the regime for limiting costs of RPS procurement changes to require the Commission to develop a procurement expenditure limitation according to certain statutory criteria.<sup>9</sup>

In addition to significant legislative developments, the RPS market itself has undergone major transformation in the last decade, and indeed in the period between the Commission's decision in D.06-06-066 and the present. This transformation includes several critical elements.

- The RPS obligations of all retail sellers are significantly higher. The original RPS goal, set by SB 1078 (Sher), Stats. 2002, ch. 516, was that, by December 31, 2017, 20% of electricity sold at retail must be from RPS-eligible generation sources.<sup>10</sup> The current goal, set by SB 2 (1X), is that 33% of all electricity sold at retail (by IOUs, POU, ESPs, and CCAs) must be from RPS-eligible generation sources by December 31, 2020.
- The RPS mandate, and thus the RPS market, is now effectively statewide. SB 2 (1X) replaced the prior goals for POU with mandatory, enforceable RPS procurement targets like those of other retail sellers. (Section 399.30.)
- The RPS-eligible resources available to retail sellers have increased substantially. By June 2006, one competitive RPS solicitation had been held by the

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<sup>8</sup> Beginning in 2021, compliance periods are annual. (Section 399.115(b)(2)(B); D.11-12-020.)

<sup>9</sup> Section 399.15(c), (d).

<sup>10</sup> This goal was changed to 20% of electricity sold at retail by December 31, 2010, by SB 107 (Simitian), Stats. 2006, ch. 464. SB 107 was signed by the Governor on September 26, 2006 and became effective January 1, 2007.

three large California IOUs<sup>11</sup>, implementing authorization given in D.05-07-039.<sup>12</sup> The utilities' solicitation received fewer than 90 bids from potential generation project developers. In response to the 2011 solicitation, more than 250 developers submitted bids for more than 1,000 RPS-eligible generation projects to the large IOUs.<sup>13</sup>

- The Commission's review of RPS procurement contracts has more parameters to examine and has become both more detailed and more standardized. Compare, e.g., Resolution (Res.) E-3965 (December 15, 2005) (three RPS procurement contracts of SDG&E: one large solar facility and two landfill gas facilities)<sup>14</sup> and Res.E-4433 (November 10, 2011) (RPS procurement contract of PG&E for one large solar facility).<sup>15</sup>
- The Commission has developed a long-term planning process for electric generation that includes consideration of forecasted RPS-eligible procurement as a significant element of its planning assumptions. In the 2004 LTTP proceeding<sup>16</sup>, D.04-12-048 simply directed the large IOUs to include forecasts of RPS procurement for the next 10 years in their 2006 LTTP

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<sup>11</sup> These are Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE).

<sup>12</sup> The submission of bids in the second RPS solicitation, authorized by D.06-05-039, was set for August 2006. (D.06-05-039, App. A.)

<sup>13</sup> Information compiled by Energy Division staff from information provided by utilities.

<sup>14</sup> Available at <http://docs.cpuc.ca.gov/published/Graphics/51972.PDF>.

<sup>15</sup> Available at [http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_RESOLUTION/154119.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_RESOLUTION/154119.PDF).

<sup>16</sup> R.04-04-003.

submissions. (D.04-12-048 at 86.) The current LTPP proceeding utilizes extensive “RPS portfolios,” extending out for 20 years.<sup>17</sup>

- The need for transmission of energy from new RPS-eligible generation to load is one of the important elements that is now taken into consideration in statewide transmission planning.<sup>18</sup> Prior to mid-2005, however, utilities were not even considering in their RPS procurement processes bids that had delivery points outside the utility’s own service territory.<sup>19</sup>

These developments, among others, in the RPS market, as well as the expanded role of RPS-eligible energy in California’s energy market as a whole, have led Energy Division staff to make the proposals set forth in the balance of this ruling. Staff believes that these proposals will better align the public disclosure of information about RPS procurement and planning with the significant public interest in the RPS program, as the Commission noted in D.06-06-066. Because of the evolution of the RPS market and the maturity of the

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<sup>17</sup> The portfolios may be accessed at <http://www.cpuc.ca.gov/PUC/energy/Procurement/LTPP/2012+LTPP+Tools+and+Spreadsheets.htm>.

<sup>18</sup> See Formal Transmittal of the [California Energy Commission] CEC and the CPUC’s Recommended Renewable Resource Portfolios for the CAISO’s 2013-2014 Transmission Planning Process (Recommended Renewable Portfolios), available at <http://www.aiso.com/Documents/2013-2014RenewablePortfoliosTransmittalLetter.pdf>.

<sup>19</sup> See the discussion in D.05-067-039, at 7-10, and Conclusion of Law 1 (requiring the large utilities to allow bids having delivery of energy at points outside their service territories, but within the California Independent System Operator (CAISO) balancing authority area.)

RPS program, these proposals reflect the view of staff that greater disclosure of RPS-related information is both feasible and desirable.<sup>20</sup>

### **C. Preliminary Staff Proposal on RPS Compliance Reporting**

#### **Background**

Retail sellers obligated under the RPS have been required to file reports on their compliance status since the inception of the RPS program. (See SB 1078 (former Pub. Util. Code § 399.14(a)(2)(B)) and D.03-06-071, at 52.) For most of the RPS program's history, compliance targets have been set, and compliance has been measured, on an annual basis. (D.06-10-050.)

SB 2 (1X) retains the annual reporting requirement, but changes the compliance period to a multi-year period for the years prior to 2021.<sup>21</sup> In implementing this requirement, the Commission has clarified that a retail seller's compliance report covering the entire compliance period will be the basis for a determination of compliance with RPS procurement obligations. Reports for intervening years in a compliance period must be accurate and conform to statutory and Commission requirements, but are essentially informational measures of the retail seller's progress toward compliance for the compliance period. (D.12-06-038, Conclusion of Law 34.)

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<sup>20</sup> D.06-06-066 limited the disclosure of information about utilities' procurement of fossil-fuel resources to a greater extent than that of RPS procurement. This limited disclosure has not been altered since D.06-06-066 was issued. By increasing the public availability of information about RPS-eligible procurement, this staff proposal would also increase the differences between the confidentiality treatment of procurement from fossil-fuel resources and procurement from RPS-eligible resources.

<sup>21</sup> These compliance periods are 2011-2013; 2014-2016; and 2017-2020. (Section 399.15(b)(1)(A)-(C).) For 2021 and succeeding years, the compliance periods are annual. (Section 399.15(b)(2)(B).)

Energy Division staff, with the participation of the parties, has developed an RPS compliance reporting format that is used by retail sellers. It is available in the RPS Compliance Reporting section of the Commission's web site.<sup>22</sup> This format is subject to periodic revisions to conform to changes in the RPS program. It currently includes both reports on the application of past RPS procurement to compliance obligations and some projections of RPS obligations and procurement expectations in the future. This reporting tool has recently been supplemented by the narrative elements required by new Section 399.13(a)(3).

**1. The confidentiality treatment of information from compliance reports should be the same for all retail sellers.**

*[ESP Matrix section I.A]*

**Rationale:**

1. Section 399.12(j)(3), as amended by SB 695 (Kehoe), Stats.2009, ch. 337, requires that ESPs "shall be subject to the same terms and conditions applicable to an electrical corporation. . ." In D.11-01-026, the Commission addressed most issues related to procurement and compliance obligations of ESPs, but did not expressly address confidentiality rules for ESPs. This should now be addressed.
2. The multi-year compliance periods instituted by SB 2 (1X) reduce the exposure of ESPs to short-term fluctuations in the RPS market.
3. Since SB 2 (1X) applies essentially the same RPS requirements to all load-serving entities (LSEs) in California, including POUs, it significantly expands

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<sup>22</sup> This section is found at:

<http://www.cpuc.ca.gov/PUC/energy/Renewables/compliance.htm>.



the number of RPS-obligated entities, both large and small. The large statewide RPS market is likely to reduce the impact on the market of greater information about RPS procurement of any particular LSE.

**2. Information for the "front two years"<sup>23</sup> of a retail seller's energy forecast of bundled load may be kept confidential.**

**Rationale:**

1. The change from annual compliance periods to multi-year compliance periods makes the information about future procurement projections less sensitive; i.e., retail sellers are less vulnerable to potentially negative market behavior in the short term because they have a longer time to manage their RPS compliance obligations.
2. SB 2 (1X) eliminated the carry-over of RPS compliance deficits from one compliance period to the next. Projections of future load therefore do not have any implications for present compliance, and a retail seller's present compliance position does not have any necessary relationship to future load projections.
3. In practice, the protection of the "front three years" under current use of the Matrix extends to four years, with the inclusion of the year of the report. This period equals or exceeds the length of any RPS compliance period, making it possible that no

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<sup>23</sup> "Front" is commonly used in the context of procurement information, but not defined in D.06-06-066. In practice, Energy Division staff and retail sellers use "front" in terms of forecast years, from the day of filing the report. The current Matrix allows the "front three years" to be kept confidential. For example, in the December 2012 RPS compliance filings, where each individual year's forecasted sales are listed, the "front three years" would be 2012, 2013, 2014, and 2015.

compliance information would be public for an entire compliance period.

4. In view of the fundamentally long-term nature of RPS procurement, protection of information about the next two future years of bundled load projections is adequate to avoid RPS market problems in the near term.
  5. The proposal would enable the Commission to more easily, transparently, and effectively carry out its responsibilities to report to the Legislature on the progress of the RPS program.
- 3. The “front two years” of a retail seller’s RPS net short position<sup>24</sup> may be kept confidential.**

*[Matrix section V.C.]*

- 1) The change from annual compliance periods to multi-year compliance periods makes information about a retail seller’s long-term “need” for RPS-eligible procurement less subject to short-term market pressures. Information about a retail seller’s RPS net short position for the current compliance period could be more sensitive, so this proposal allows a retail seller to protect such information to the same extent it protects its bundled load projections.

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<sup>24</sup> The renewable net short is:

the amount of new renewable generation necessary for retail sellers to meet or exceed the renewable target. The process for calculating the net short includes forecasting the renewable target and then subtracting the renewable supply forecast. The renewable supply forecast is the forecasted amount of renewable generation from contracted facilities both online and under development.

(Administrative Law Judge’s Ruling (1) Adopting Renewable Net Short Calculation Methodology (2) Incorporating the Attached Methodology into the Record, and (3) Extending the Date for Filing Updates to 2012 Procurement Plans (August 2, 2012), at 2.)

- 2) In practice, the protection of the “front three years” under current use of the Matrix extends to four years, with the inclusion of the year of the report. This period equals or exceeds the length of any RPS compliance period.
  - 3) The significant public interest inherent in the RPS program and the large amounts of money invested in RPS compliance by the customers of retail sellers suggest that the Commission should make it as easy as feasible for customers to understand what they are paying for
  - 4) Increased transparency with respect to retail sellers’ RPS net short will:
    - a. Make the “RPS portfolios” developed for the LTPP proceeding (currently R.12-03-014) and other resource planning efforts (e.g., the Commission’s Resource Adequacy program and the CAISO’s Transmission Planning Process<sup>25</sup> more useful through greater transparency and accessibility; and
    - b. Encourage market certainty and stability by making information about RPS procurement needs more widely and routinely available.
- 4. The compliance reporting tool should be redesigned to provide a self-contained report of past compliance performance, independent of any present performance or future procurement projections. This report should be publicly available.**

*[Matrix sections V.C. and E.]*

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<sup>25</sup> For the most recent example, see Recommended Renewable Portfolios, available at <http://www.caiso.com/Documents/2013-2014RenewablePortfoliosTransmittalLetter.pdf>.

**Rationale:**

- 1) The RPS obligations of California electricity providers make up a significant fraction of their procurement: 20% in the 2011-2013 compliance period, rising to 33% in 2017-2020 and thereafter. The performance of these entities in meeting their obligations is of significant public importance and relates to the interests of IOU customers, ESP customers, CCA customers, and the customers of publicly owned utilities--i.e., all Californians--in safe and reliable electricity service at just and reasonable rates.
- 2) Compliance reports could be designed to address activity wholly in the past. Annual reports are due the August after the end of the most recent year being reported on. (D.12-06-038, Ordering Paragraph (OP) 34.) Separating past compliance from future projections could make it easier for all interested parties and the public, not simply the Commission's staff, to understand the retail seller's current compliance position.
- 3) SB 2 (1X) eliminated the carry-over of RPS compliance deficits from one compliance period to the next. (Section 399.15(b)(9)). As a result, projections of future procurement are not relevant to evaluating information on past compliance.
- 4) Multi-year compliance periods instituted by SB 2 (1X) reduce the vulnerability of retail sellers to RPS market fluctuations in any one year, and thus reduce the future impact of public availability of information on past procurement allocated to RPS compliance.

- 5) In practice, most compliance information is already publicly available through the RPS compliance reporting process.<sup>26</sup>
- 6) Stand-alone compliance reporting will align California's RPS reporting practice with that of other states in the Western Electricity Coordinating Council (WECC), such as Arizona and Washington.

#### **D. Preliminary Staff Proposal on Price Disclosure**

##### **Background**

IOUs' RPS procurement contracts must be submitted for Commission review and approval. (Section 399.13(d).)<sup>27</sup> This review is typically accomplished by the utility submitting a Tier 3 advice letter, which is reviewed by Energy Division staff and becomes the subject of a draft resolution that is presented to the Commission for consideration and final disposition.<sup>28</sup> In 2011, 64 RPS contracts representing 3,725 MW were approved by the Commission.<sup>29</sup>

RPS long-term procurement contracts presented for Commission review by Tier 3 advice letter are typically between an IOU and the developer of a planned renewable generation facility that will begin commercial operation

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<sup>26</sup> See, e.g., RPS Compliance Reports Archive, available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/compliance.htm>.

<sup>27</sup> RPS procurement contracts of ESPs and CCAs do not require Commission approval. The Commission has determined that RPS procurement contracts of multi-jurisdictional utilities (MJUs) do not require Commission approval unless the contract is procuring exclusively for California customers of the MJU. (D.08-05-029.)

<sup>28</sup> See, e.g., Res. E-4462 (SDG&E/Catalina Solar) (March 8, 2012), available at [http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_RESOLUTION/161521.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_RESOLUTION/161521.PDF).

<sup>29</sup> Renewables Portfolio Standard Quarterly Report 3d and 4th Quarter 2012, at 7, found at [http://www.cpuc.ca.gov/NR/ronlyres/4F902F57-78BA-4A5F-BDFA-C9CAF48A2500/0/2012\\_Q3\\_Q4RPSReportFINAL.pdf](http://www.cpuc.ca.gov/NR/ronlyres/4F902F57-78BA-4A5F-BDFA-C9CAF48A2500/0/2012_Q3_Q4RPSReportFINAL.pdf).

some years in the future. In most cases, the commercial on-line date of the generation facility is at least two or three years after Commission approval of the contract through the advice letter process. In some cases, it is significantly longer. For example, in the fall of 2010, the Commission approved a large procurement contract with an on-line date of late 2015. (Res. E-4347 (SCE/Desert Stateline (First Solar) (September 2, 2010)).

The public versions of draft resolutions prepared by Energy Division do not reveal the price of the proposed contract. The price is contained in a separate, confidential version of the draft resolution.<sup>30</sup> After the draft resolution is acted on by the Commission, two versions of the final resolution are published. The public version does not include information about price, contract evaluations, contract terms, or comparative bids; the confidential version does. The full scope of information currently becomes publicly available three years after the commercial online date of the generating facility, through public release of the contract. In the example of the Desert Stateline project, above, the RPS procurement contract would become publicly available more than eight years after it was approved, in late 2018 or early 2019, assuming there were no significant delays in the commercial online date for the generating facility.

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<sup>30</sup> This is true even when the cost is a central element of the Commission's consideration of the contract. See, e.g., Res. E-4433 (PG&E/ Abengoa Solar, Inc.) (November 11, 2011): "For all the strengths underlying the Mojave Solar project, it has one significant weakness - the cost." (At 2.) The cost, however, is currently not publicly available.

**1. For RPS procurement contracts requiring Commission approval via resolution, the contract price is publicly disclosed in the draft resolution and in the final resolution adopted by the Commission.**

*[Matrix Section VII.F, VII.G]*

**Rationale:**

- 1) At the time the draft resolution is issued, negotiations about that project are over, and the utility can no longer unilaterally withdraw the advice letter. (GO 96-B, § 5.3.) There is no danger to the utility's position on that project from public disclosure of the price.
- 2) The RPS market has matured, with a robust procurement process and many potential providers of RPS-eligible generation.<sup>31</sup> In addition, SB 2 (1X) expanded the group of LSEs subject to binding RPS obligations, by extending essentially the same requirements that apply to retail sellers to POUs.<sup>32</sup>

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<sup>31</sup> As noted in the Quarterly Report to the Legislature, Fourth Quarter 2011, at 8, in the RPS solicitation conducted in 2011, IOUs received more than 3,000 proposals from over 260 sellers, representing approximately 91,000 MW of proposed RPS-eligible capacity. This report is available at <http://www.cpuc.ca.gov/NR/rdonlyres/3B3FE98B-D833-428A-B606-47C9B64B7A89/0/Q4RPSReporttotheLegislatureFINAL3.pdf>. The total RPS-eligible capacity required for the IOUs to meet the RPS goal of 33% of retail sales in the 2017-2020 compliance period has been estimated by CAISO as approximately 20,500 MW, with an incremental need of about 10,200 MW. (CAISO March 14, 2013 Memo to Board of Governors, available at [http://www.caiso.com/Documents/BriefingRenewableGenerationISO\\_GeneratorInterconnectionQueue-Memo-Mar2013.pdf](http://www.caiso.com/Documents/BriefingRenewableGenerationISO_GeneratorInterconnectionQueue-Memo-Mar2013.pdf).)

<sup>32</sup> Section 399.30 (a)-(c) provides:

- (a) In order to fulfill unmet long-term generation resource needs, each local publicly owned electric utility shall adopt and implement a renewable energy resources procurement plan that requires the utility to procure a minimum quantity of electricity products from

*Footnote continued on next page*

All California LSEs now therefore participate in the WECC-wide market for RPS-eligible generation resources.<sup>33</sup> The likelihood that disclosure of the

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eligible renewable energy resources, including renewable energy credits, as a specified percentage of total kilowatt hours sold to the utility's retail end-use customers, each compliance period, to achieve the targets of subdivision (c).

(b) The governing board shall implement procurement targets for a local publicly owned electric utility that require the utility to procure a minimum quantity of eligible renewable energy resources for each of the following compliance periods:

- (1) January 1, 2011, to December 31, 2013, inclusive.
- (2) January 1, 2014, to December 31, 2016, inclusive.
- (3) January 1, 2017, to December 31, 2020, inclusive.

(c) The governing board of a local publicly owned electric utility shall ensure all of the following:

- (1) The quantities of eligible renewable energy resources to be procured for the compliance period from January 1, 2011, to December 31, 2013, inclusive, are equal to an average of 20 percent of retail sales.
- (2) The quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020. The local governing board shall require the local publicly owned electric utilities to procure not less than 33 percent of retail sales of electricity products from eligible renewable energy resources in all subsequent years.
- (3) A local publicly owned electric utility shall adopt procurement requirements consistent with Section 399.16.

<sup>33</sup> "Various electricity products from eligible renewable energy resources located within the WECC transmission network service area shall be eligible to comply with the renewables portfolio standard procurement requirements in Section 399.15. " (Section 399.16(a).)



price of a contract at the time the Commission considers it will have a substantial impact on the large and diversified RPS market is slight.

- 3) As a result of the current system, no public discussion of the actual price of RPS procurement contracts that may extend for 20 years and cost hundreds of millions of dollars over the life of the contract occurs prior to Commission approval or rejection of the contract.<sup>34</sup> Commissioners discuss the contract under consideration without mentioning the price, although among the key elements in both staff and Commission review of an RPS procurement contract are the price and the value of the contract to IOU customers.<sup>35</sup>
- 4) In practice, the current system can lead to the price of a significant RPS procurement contract approved by Commission resolution remaining unavailable to the public for up to 10 or 12 years after Commission approval of the contract, because the on-line date of the generation project is many years after the submission of the RPS procurement contract for Commission approval.

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<sup>34</sup> See, e.g., PG&E/Shiloh II, Res. E-4161 (April 15, 2008). The 20-year contract with a 150 MW wind farm has a total contract cost of approximately \$885 million. (RPS Project Status Table, found at <http://www.cpuc.ca.gov/PUC/energy/Renewables/index.htm>.)

<sup>35</sup> See, e.g., Res. E-4577 (April 18, 2013), at 7-8:  
The RE Kansas PPA compared favorably against other offers based on price, non-price factors and portfolio fit using the [net market value] NMV methodology. *See Confidential Appendix A for a price and value comparison.* (Emphasis added.)

- 2. For RPS procurement contracts submitted for Commission approval via advice letter but not submitted through a Tier 3 advice letter that requires approval by Commission resolution (e.g., contracts under the renewable auction mechanism (RAM))<sup>36</sup>, the contract price is publicly disclosed at the time the advice letter is filed.**

*[Matrix Section VII.F, VII.G.]*

**Rationale:**

- 1) At the time the advice letter is submitted, negotiations about that project are over. Indeed, for RAM projects, there is no negotiation on price at all. (D.10-12-048, App. A at 3.) There is no danger to the utility's position on that project from public disclosure of the price.
  - 2) The RPS market has matured, with a robust procurement process and many potential providers of RPS-eligible generation. The likelihood that disclosure of the price of a contract at the time a Tier 1 or Tier 2 advice letter is filed will have a substantial impact on the diversified RPS market is slight.
- 3. For IOUs' RPS procurement contracts that are submitted for Commission approval via application, the following information in testimony and other documents is publicly disclosed at the time it is submitted in the proceeding:**
    - **the contract price;**
    - **quantitative evaluation of the contract for least-cost, best fit analysis;**
    - **total expected contract costs;**
    - **total expected indirect costs; and**

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<sup>36</sup> The Commission initiated the RAM program in D.10-12-048.

- **rate impact.**
- **All other information relating to the evaluation of the contract (e.g., specific quantitative analysis involved in scoring and evaluating RPS bids, score sheets, analyses, evaluations of proposed RPS projects) is publicly available 30 days after delivery of energy and/or renewable energy credits (RECs)<sup>37</sup> commences, or three years after the Commission approves the contract, whichever comes first.**

*[Matrix Sections VII.F, VII.G., VII.H.]*

**Rationale:**

- 1) Since most RPS contracts are submitted for Commission approval by advice letter, applications will usually present particularly complex problems of RPS policy or will be used to seek exceptions to general RPS procurement rules. Participation of potentially interested parties will be aided by early and extensive public availability of information.
- 2) Because applications for approval of RPS procurement contracts are likely to present complex issues, the Commission will benefit from the fullest possible development of the record in the application.

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<sup>37</sup> Section 399.12(h)(1) defines a renewable energy credit as:

a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, issued through the accounting system established by the Energy Commission pursuant to Section 399.25, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

In practice, the unit of electricity for a REC is one MWh. RECs are currently tracked in the Western Renewable Energy Generation Information System (WREGIS).

4. **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.**

*[Matrix Section VII.F, VII.G.; ESP Matrix Section I.C.]*

**Rationale:**

- 1) Because price disclosure is not a valuable element for Commission decision-making if an RPS contract does not require Commission approval, price disclosure in those cases can be made at a time different from other contracts, so long as it provides useful information to the public and protects the commercial interests of the contracting parties.
- 2) The general public interest in RPS costs overall and the Commission's obligations to report to the Legislature about the RPS program, including its costs, support disclosure of the price of RPS procurement contracts by all retail sellers.<sup>38</sup>
- 3) 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.

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<sup>38</sup> The Commission's quarterly reports to the Legislature are required by the 2006 Budget Act Supplemental Report Item 8660-001-0462. The most recent quarterly report may be found at [http://www.cpuc.ca.gov/NR/rdonlyres/4F902F57-78BA-4A5F-BDFA-C9CAF48A2500/0/2012\\_Q3\\_Q4RPSReportFINAL.pdf](http://www.cpuc.ca.gov/NR/rdonlyres/4F902F57-78BA-4A5F-BDFA-C9CAF48A2500/0/2012_Q3_Q4RPSReportFINAL.pdf).

Recently added reporting responsibilities are discussed in the next section.

- 4) SB 2 (1X) in effect created a statewide obligation to participate in the WECC-wide market for RPS-eligible generation when it extended RPS procurement obligations to POUs. The likelihood that the disclosure of price of any individual contract would have a significant near-term effect on that large market is slight.
- 5) As a result of the enactment of SB 695, ESPs are now “subject to the same terms and conditions applicable to an electrical corporation” in the RPS program. (Section 399.12(j)(3).)

### **E. Preliminary Staff Proposal on Costs of RPS Procurement Contracts**

#### **Background**

SB 2 (1X) creates a new regime for RPS procurement cost containment. The previous statutory regime required the Commission to establish a market price for electricity. This was implemented through the development and calculation of the market price referent (MPR).<sup>39</sup> SB 2 (1X) now requires the Commission to establish a procurement expenditure limitation for each IOU, based on enumerated statutory criteria that cover a wide range of utility costs.<sup>40</sup>

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<sup>39</sup> The prior requirement to calculate the market price was found at former Section 399.15(c). The Commission's principal decisions implementing the MPR are D.05-12-042 and D.08-10-026.

<sup>40</sup> The criteria are found at Sections 399.15(c) and (d):

(c) The commission shall establish a limitation for each electrical corporation on the procurement expenditures for all eligible renewable energy resources used to comply with the renewables portfolio standard. In establishing this limitation, the commission shall rely on the following:

- (1) The most recent renewable energy procurement plan.

*Footnote continued on next page*

Pursuant to Sections 399.15(e) and (g), the Commission must also submit certain reports to the Legislature about the procurement expenditure limitation as a whole, as well as the situations of each IOU with respect to its procurement expenditure limitation.

SB 2 (1X) also creates a new report that the Commission must submit to the Legislature, pursuant to Section 910. This report (currently called the Section 910 Report) covers the IOUs' direct and indirect costs and cost savings with respect to RPS eligible procurement and all forms of distributed generation (DG).<sup>41</sup> In separate legislation (SB 836 (Padilla), Stats. 2011, ch. 600), codified at Section 911, the Legislature requires the Commission to report on the costs of procurement of renewable energy resources.<sup>42</sup>

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(2) Procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources.

(3) The potential that some planned resource additions may be delayed or canceled.

(d) In developing the limitation pursuant to subdivision (c), the commission shall ensure all of the following:

(1) The limitation is set at a level that prevents disproportionate rate impacts.

(2) The costs of all procurement credited toward achieving the renewables portfolio standard are counted towards the limitation.

(3) Procurement expenditures do not include any indirect expenses, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any utility-owned hydroelectric facilities.

<sup>41</sup> The initial Section 910 Report, submitted to the Legislature in March 2013, is available at <http://www.cpuc.ca.gov/NR/rdonlyres/53A5AE33-0954-4342-B8F2-1A04F67DFFB6/0/Section910Report.pdf>.

<sup>42</sup> This report is currently called the Padilla Report. The most recent report, submitted to the Legislature in March 2013, is available at <http://www.cpuc.ca.gov/NR/rdonlyres/F0F6E15A-6A04-41C3-ACBA-8C13726FB5CB/0/PadillaReport2012Final.pdf>.

**1 Actual total MWh of RPS-eligible electricity procured in any prior year by each retail seller are public.**

*[Matrix Section X.E]*

**Rationale:**

- 1) Multi-year RPS compliance periods make procurement information from prior years less sensitive than under the former annual compliance regime.
- 2) Publicly available information on procurement enables the Commission to carry out its increased reporting responsibilities to the Legislature (e.g., Quarterly Reports, Section 910 Report, Padilla Report) fairly and fully.
- 3) The RPS market has matured, with a robust procurement process and many potential providers of RPS-eligible generation. The likelihood that disclosure of historic procurement amounts will have a substantial impact on the diversified RPS market is slight.
- 4) SB 695 provides that ESPs “shall be subject to the same terms and conditions applicable to an electrical corporation.”

**2. Annual information on total RPS procurement costs incurred by each retail seller in any prior year is public.**

*[Matrix Section VII.F, VII.G]*

**Rationale:**

- 1) Multi-year RPS compliance periods make price and cost information from prior years less sensitive than under the former annual compliance regime.
- 2) Publicly available information on price and costs enables the Commission to carry out its increased reporting responsibilities to the Legislature (e.g., Quarterly Reports, Section 910 Report, Padilla Report) fairly and fully.

- 3) The RPS market has matured, with a robust procurement process and many potential providers of RPS-eligible generation. The likelihood that disclosure of historic contract price will have a substantial impact on the diversified RPS market is slight.
- 4) SB 695 provides that ESPs “shall be subject to the same terms and conditions applicable to an electrical corporation.”

**3. RPS procurement contract generation cost forecasts of each retail seller are public when aggregated by resource category (e.g., wind, solar, geothermal, etc.), so long as there are more than two contracts or facilities in the resource category.<sup>43</sup>**

*[Matrix Section II.B.4]*

**Rationale:**

- 1) Implementing the RPS procurement expenditure limitations required by SB 2 (1X) is likely to require greater availability and transparency of cost forecasts in order to provide a robust tool that is understandable to parties, IOU customers, the Legislature, and the general public.
- 2) In view of the Commission’s increased reporting responsibilities to the Legislature, information should be publicly available both in the mandated reports and at its source.
- 3) Reporting requirements should not lead to otherwise confidential information about one individual contract being revealed unless the retail seller consents.

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<sup>43</sup> For RPS-eligible UOG, generation cost forecasts are currently public in the application for approval of the UOG. (See, e.g., Application 09-12-002 (PG&E Manzana Wind).) No change in this rule is proposed.



- 4) SB 695 provides that ESPs “shall be subject to the same terms and conditions applicable to an electrical corporation.”

**4. Certain general information about bids received in response to IOUs’ RPS solicitations is public.**

This information includes:

- total number of bids received by each IOU in a solicitation; and
- number of bids shortlisted by each IOU for a solicitation.

*[Matrix Section VIII.A.]*

**Rationale:**

- 1) Increased transparency of information about RPS solicitations will allow developers of RPS-eligible generation to make more informed bids, more closely tailored to needs of soliciting IOUs.
- 2) New statutory procurement expenditure limitations will require greater transparency in both historic and forecast cost information.
- 3) Increased planning coordination within the Commission with respect to the LTPP proceeding and outside the Commission (e.g., CEC, CAISO) will require greater transparency in forecast cost information.

**F. Preliminary Staff Proposal: Commission Review Of RPS Procurement Contracts; Planning Requirements**

**Background**

RPS procurement planning occurs in several contexts: the formal annual RPS procurement plans required by Section 399.13(a)(1);<sup>44</sup> the implementation of specific RPS procurement programs, such as RAM;<sup>45</sup> the

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<sup>44</sup> D.12-11-016 is the most recent decision conditionally approving annual procurement plans.

<sup>45</sup> D.10-12-048.

feed-in tariff (FiT);<sup>46</sup> the RPS component of the LTPP process;<sup>47</sup> and the scenarios of RPS-eligible generation used by CAISO and the Commission in planning for new transmission. The variety of contexts leads to a variety of information needs. Since these contexts all have some degree of public process and a high degree of public interest, it is reasonable to develop an information regime that maximizes the public availability of data for planning purposes.

The basic information that is useful to the Commission and other agencies for statewide planning purposes is also necessary for the Commission's analysis of the value and appropriateness of a particular RPS procurement contract that is submitted for approval. Commission review of individual RPS procurement contracts is separate from statewide planning for procurement or transmission, and has its own standards of review. This staff proposal nevertheless includes the two processes together in this section because the treatment of information disclosure is similar for both processes.

**1. Certain information about each bid received in response to each IOU's RPS solicitation, but not shortlisted, is public the day after the Commission approves the IOU's shortlist for that solicitation.**

**This information includes:**

- **individual project capacity;**
- **facility location;**
- **identification of WECC Bus ID where the project is or will be interconnected;**
- **generation technology;**

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<sup>46</sup> See Section 399.20.

<sup>47</sup> See, e.g., Assigned Commissioner's Ruling on Standardized Planning Assumptions in R.12-03-014, at 19, available at <http://docs.cpuc.ca.gov/PublishedDocs/EFIELD/RULINGS/169732.PDF>.

- proposed online date;
- whether the project is new, currently operating, repowered, or restarted<sup>48</sup>;
- contract term length;
- expected annual energy offered;
- expected annual RECs offered in REC-only contracts; and
- delivery point.

All other information about individual bids may be kept confidential for three years after the close of the RPS solicitation to which the bids responded.

*[Matrix Section: No current Matrix section]*

**Rationale:**

Increased planning coordination within the Commission with respect to the LTPP proceeding and outside the Commission (e.g., CAISO) will require greater transparency in information about proposed RPS-eligible generation projects.

- 2. Certain information about each shortlisted bid received in response to each IOU's RPS solicitation, but not resulting in an executed contract, is public the day after the shortlist for that solicitation expires.<sup>49</sup>**

This information includes:

- individual project capacity;
- facility location;
- identification of WECC Bus ID where the project is or will be interconnected;
- generation technology;
- proposed online date;
- whether the project is new, currently operating, repowered, or restarted;

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<sup>48</sup> This parameter is often referred to as "vintage." See, e.g., the RPS Project Status Table prepared by Energy Division staff and found at <http://www.cpuc.ca.gov/PUC/energy/Renewables/index.htm>.

<sup>49</sup> See D.12-11-016, OP 9.

- **contract term length;**
- **expected annual energy offered;**
- **expected annual RECs offered in REC-only contracts;**  
**and**
- **delivery point.**

**All other information about individual bids may be kept confidential for three years after the close of the RPS solicitation to which the bids responded.**

*[Matrix Section: No current Matrix section]*

**Rationale:**

Increased planning coordination within the Commission with respect to LTPP proceeding and outside the Commission (e.g., CAISO) will require greater transparency in information about proposed RPS-eligible generation projects.

- 3. Bid prices of all bids received in response to each IOU's RPS solicitation are public when aggregated by resource category,<sup>50</sup> so long as there are more than two bids in a category, the day after the Commission approves the IOU's shortlist for that solicitation.**

**Rationale:**

- 1) Implementation of new statutory procurement expenditure limitations will require greater transparency in both historic and forecast information about RPS procurement costs.
- 2) Increased planning coordination within the Commission with respect to the LTPP proceeding and outside the Commission (e.g., CEC, CAISO) will require greater transparency in information about proposed RPS-eligible generation projects, as well as historic information.

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<sup>50</sup> "Resource category" refers to the type of renewable generation facility (e.g. fossil, wind, solar, hydro-electric).

**4. Information about the generation forecast in each approved RPS procurement contract of an IOU or UOG authorization to an IOU is public.**

This information includes:

- forecasts of RPS-eligible energy (MWh), capacity (MW), and RECs;
- facility location;
- generation technology;
- emissions of air and/or water pollutants, by pollutant, for each individual contract or UOG facility.

*[Matrix Section IV.H]*

**Rationale:**

Increased transparency is necessary for developing more accurate long-term planning scenarios that influence costs to ratepayers through decisions about both RPS procurement and development of new transmission.

**5. The RPS generation forecast is public for RPS procurement offers that have been short-listed in the solicitation process of an IOU, or that are the subject of bilateral negotiations between an IOU and a generation developer, if aggregated by resource category, and there are more than two contracts in a category.**

Forecast information includes:

- forecasts of RPS-eligible energy (MWh), capacity (MW), and RECs;
- facility location;
- generation technology;
- emissions of air and/or water pollutants, by pollutant, for each category.

*[Matrix Section: no current Matrix section]*

**Rationale:**

Increased transparency is necessary for developing more accurate long-term planning scenarios that influence costs to ratepayers through decisions about both RPS procurement and development of new transmission.

**6. The RPS generation forecast assumptions used by each IOU for purposes of calculating that IOU's renewable net short (RNS) are public, including project viability and failure assessment assumptions.**

*[Matrix Section: no current Matrix section]*

**Rationale:**

- 1) The increasing importance of information about RPS procurement forecasts in the planning activities of other agencies, especially CAISO, makes public availability of the assumptions underlying the forecasts increasingly important, as well.
  - 2) Making RPS procurement planning and review at the Commission more efficient and streamlined requires better availability of underlying assumptions and background of IOUs' planning and procurement activities.
- 7. The following terms of RPS procurement contracts of IOUs are publicly disclosed in the advice letter submitting the contract for Commission approval:**
- price (see section 2, above);
  - counterparty;
  - project name
  - resource type;
  - technology;
  - location;
  - capacity (MW);
  - procurement (MWh, 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.**

**Any other contract information is public three years after contract execution or upon contract expiration, whichever comes first.**

*[Matrix Section VII.F, VII.G]*

**Rationale:**

- 1) The submission of an advice letter marks the termination of the negotiations about that particular RPS procurement contract. Negotiations between the parties to the contract will not be affected by disclosure.
- 2) Informed decision-making by the Commission will be aided by public availability of important information about RPS procurement contracts under review.
- 3) Coordination between RPS and LTPP planning processes, as well as with CAISO, will be improved with earlier, as well as greater, public availability of information about new projects for RPS-eligible generation, including but not limited to information about proposed interconnection points.
- 4) Planning by the Commission and other state agencies, as well as by IOUs and POUs, will be informed by a robust understanding of the impact of RPS procurement contracts sooner, rather than later, when such information can be most effective for planning purposes.

**8. The following terms of RPS procurement contracts of ESPs and CCAs<sup>51</sup> are publicly available 30 days after deliveries (energy and/or RECs) begin under the contract:**

- price (see section 2, above);
- 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.

**Any other contract information is public three years after contract execution or upon contract expiration, whichever comes first.**

*[Matrix Section VII.G; ESP Matrix Section I.C.]*

**Rationale:**

- 1) Because the Commission does not approve contracts of ESPs or CCAs, it does not need this information in advance of the implementation of the contract's terms. But, since ESPs and CCAs are part of the statewide RPS market, it is important for information about their RPS procurement to be publicly available in ways roughly analogous to that of IOUs.
- 2) SB 695 requires that ESPs "shall be subject to the same terms and conditions applicable to an electrical corporation. . ."

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<sup>51</sup> For CCAs, this provision applies to the extent that a CCA's own rules do not provide for such disclosure.



**9. The following information in an RPS procurement contract using a standard contract is public.**

- **Interconnection information that is published in an IOU's interconnection queue;**
- **Information in progress reports and/or advice letters submitted to the Commission regarding project development milestones;**
- **Descriptions in progress reports and/or advice letters submitted to the Commission of bids that were rejected and/or terminated on the basis of distribution or network upgrade costs.**

*[ Matrix Section: No current Matrix section ]*

**Rationale:**

- 1) This will ensure consistency of disclosure among Commission contracting rules for RAM and all relevant interconnection processes.
- 2) For purposes of public availability of interconnection information, standard contracts should not be treated differently from other RPS procurement contracts.
- 3) Earlier disclosure of interconnection information provides the increased transparency necessary to provide more accurate RPS capacity and generation forecasts to LTPP and CAISO for long-term procurement and transmission planning.

**10. Amending an RPS procurement contract does not affect the confidentiality requirements that apply to prior versions of the contract, including the time frame for making information public.**

*[Matrix Section: no current Matrix section]*<sup>52</sup>

**Rationale:**

- 1) The confidentiality rules should be consistent in the timing of public availability of information, without regard to later changes in a document or compilation of information.
- 2) The Commission's confidentiality rules should not drive the decisions retail sellers and their counterparties make with respect to amending RPS procurement contracts.
- 3) Contract amendments should not lead to uncertainty about the public availability of information.

**11. For UOG projects that the utility intends to be RPS-eligible, the following information is publicly disclosed in the application for Commission approval of the UOG project:**

- all information about the proposed generation facility, including
  - technology
  - location
  - capacity; and
  - WECC Bus ID where project is or will be interconnected.
- known or estimated capital and operating costs;
- whether utility ownership will be by turnkey arrangement, buy-out, or utility build.

**Any additional information that the assigned ALJ determines should be publicly disclosed will be handled as directed by the ALJ.**

*[Matrix: Section VII.A]*

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<sup>52</sup> Cf. D.08-04-023, App. C, n. 3.

**Rationale:**

- 1) Public disclosure of information about proposed UOG projects should be similar to that of third-party projects with which an IOU may contract for RPS procurement.
- 2) Public availability of information about proposed UOG projects will aid in the Commission's determination of whether the project meets the new criteria for Commission consideration of UOG projects that are intended to be RPS-eligible. (Pub. Util. Code § 399.14.)

**G. Preliminary Staff Proposal: General Planning and Disclosure**

The proposal in this section is put forward in order to increase public availability of a range of RPS-related information. Staff is of the view that this proposal advances the public interest in disclosure of information about the implementation of the RPS program. Since this proposal is not necessarily tied to information needs for particular actions by the Commission or other agencies, it is presented in a separate section.

- 1. RPS project specific evaluations and scores for IOUs' procurement contracts approved by the Commission are publicly available 30 days after energy and/or REC delivery begins pursuant to the contract, or three years after the Commission approves the contract, whichever comes first.**

**Publicly available evaluation and score information includes:**

- **levelized and/or escalated bid prices;**
- **energy cost/price forecasts;**
- **resource adequacy forecast;**
- **transmission upgrade cost adders;**
- **wheeling charges;**
- **congestion costs;**
- **delivery characteristics;**
- **portfolio fit;**
- **"dump energy" quantities and cost; and**

- **project viability scores.**

**All other evaluation information may be kept confidential for three years after the close of the IOU's solicitation.**

*[Matrix Section VIII.B]*

**Rationale:**

- 1) Increased availability of information about evaluation of RPS contracts will improve bidders' ability to understand and conform to IOUs' RPS procurement criteria.
- 2) The number and range of potential RPS projects reduces the likelihood that information about IOUs' evaluation criteria will lead to increased prices of bids conforming to the criteria.
- 3) Public availability of evaluations increases the consistency of IOUs' evaluation of and the Commission's decisions about RPS procurement contracts through time.

**6. Effective Date and Transition Provisions**

Because this proposal covers a wide range of RPS transactions and documents, it is reasonable to identify those documents to which it applies immediately upon adoption by the Commission, and those for which the application of any new rules will be phased in.

1. New rules, if any, would apply on the effective date of the Commission decision adopting the new rules to:
  - Any RPS procurement contract signed after the effective date of the decision and all steps in Commission review and/or approval of the contract, if Commission review and/or approval is required;
  - Any RPS compliance report, or other document related to compliance with or enforcement of any RPS obligation, that is submitted to the Commission after the effective date of the decision;

- Any RPS procurement contract that expired prior to the effective date of the decision;
  - Any draft resolution on a Tier 3 advice letter seeking Commission approval of an RPS procurement contract that is issued for public comment after the effective date of the decision;
  - Any final resolution on a Tier 3 advice letter seeking Commission approval of an RPS procurement contract that was adopted by the Commission prior to the effective date of the decision;
  - Any Commission decision on an application for approval of an RPS procurement contract (whether PPA or UOG) that was issued prior to the effective date of the decision;
  - Any application seeking Commission approval of RPS procurement (whether PPA or UOG) pending on the effective date of the decision, in which the record of the application proceeding has not been closed;
  - Any application seeking Commission approval of RPS procurement (whether PPA or UOG) filed after the effective date of the decision;
  - Any RPS compliance report, or other document related to compliance with or enforcement of any RPS obligation, that was submitted to the Commission more than six months before the effective date of the decision; and
  - Any RPS procurement information, whenever generated, that can be aggregated to meet the requirements for disclosure in the decision.
2. The new rules, if any, would apply six months from the effective date of the Commission decision adopting the new rules to:
- Any RPS procurement contract signed before the effective date of the decision for which a Tier 3 advice

letter has been submitted and a draft resolution has not been issued for public comment;

- Any RPS compliance report, or other document related to compliance with or enforcement of any RPS obligation, that was submitted to the Commission less than six months before the effective date of the decision; and
- Any application seeking Commission approval of RPS procurement (whether PPA or UOG) pending on the effective date of the decision, in which the record of the application proceeding was closed less than six months prior to the effective date of the decision but the Commission had not issued a decision by the effective date of the decision.

**IT IS RULED that:**

1. Comments of not more than 50 pages, addressing the issues identified in this ruling, may be filed and served not later than July 29, 2013.
2. Reply comments of not more than 25 pages may be filed and served not later than August 20, 2013.
3. Comments and reply comments must be served on the service lists of this proceeding (R.11-05-005), the current LTPP proceeding (R.12-03-014), and the 2005 confidentiality proceeding (R.05-06-040).
4. In addition to service by electronic mail, paper copies of comments and reply comments must be promptly provided to Administrative Law Judge (ALJ) Anne Simon and ALJ Regina DeAngelis.

Dated July 1, 2013, at San Francisco, California.

/s/ DOUGLAS M. LONG for  
Anne E. Simon  
Administrative Law Judge