



CR6/nd3 2/27/2020

**FILED**  
02/27/20  
11:21 AM

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking To Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.

Rulemaking 18-07-003

**ASSIGNED COMMISSIONER'S RULING  
REQUESTING COMMENTS ON STAFF PROPOSAL  
TO CLARIFY AND IMPROVE CONFIDENTIALITY RULES  
FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

**1. Introduction**

This ruling seeks comment on an Energy Division staff proposal to make the rules related to confidentiality of information about compliance, reporting, procurement, and planning for the California renewable portfolio standard (RPS) program more transparent, accessible, and consistent.<sup>1</sup> The staff proposal, which is Attachment A to this ruling, 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.)

---

<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.

## 2. Background

On July 1, 2013, the Commission issued a ruling requesting comments on a staff proposal to clarify and improve confidentiality rules for the RPS program.<sup>2</sup> In response to that ruling, parties filed comments and reply comments. As the Commission considered these comments and prepared to implement revised confidentiality rules for information related to the RPS program, new legislation was introduced that altered the RPS program and required the Commission to expediently implement these changes. Most notably, Senate Bill (SB) 350 (De León), Stats. 2015, ch. 547 and SB 100 (De León), Stats. 2018, ch. 312 increased RPS procurement requirements and added other procurement limitations.

Furthermore, in the time since the Commission's July 2013 ruling in the RPS proceeding regarding confidentiality, another Rulemaking ((R.) 14-11-001) was established to consider and revise confidentiality issues across the Commission as a whole. Before moving forward with any changes resulting from the 2013 staff proposal and ruling, the Commission opted to prioritize other issues while the R.14-11-001 proceeding determined its scope and whether or not it would include a comprehensive consideration of confidentiality rules for energy procurement, including RPS eligible procurement.

With the Commission's implementation of RPS-related legislation and R.14-01-001's current scope focusing on the potential development of new confidential matrices in other areas – not the modification of specific confidentiality rules related to RPS eligible procurement – it is important that the Commission revisit the ruling from 2013 and update confidentiality rules in

---

<sup>2</sup> <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M068/K707/68707826.PDF>. Today's ruling is being issued in the successor RPS proceeding, R.18-07-003. The prior ruling and comments were filed in R.11-05-005.

the RPS proceeding, as appropriate. Because several years have passed since the 2013 ruling, it is also important that parties have an opportunity to weigh in again, whether to reiterate their past points or update their positions. The renewables market has changed and matured considerably since 2013. Moreover, there are new entrants into the market and more parties to the RPS proceeding that should have an opportunity to comment on these proposed changes to RPS confidentiality rules.

As noted in the 2013 ruling, 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 Sections 454.5(g)<sup>3</sup> and 583.<sup>4</sup> Decision 06-06-066, as modified by D.07-05-032, D.08-04-023, D.16-08-024, D.17-09-023 and/or D.19-01-028, is the comprehensive expression of the

---

<sup>3</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 nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

<sup>4</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.

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>5</sup> General Order 66-D<sup>6</sup> addresses the public availability of Commission records and documents. Resolution 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 public-owned utilities (POUs) in California, has been the subject of much legislation and many decisions by the Commission.<sup>7</sup> Most recently, SB 100 significantly increased the procurement requirements under the RPS program. The Commission has implemented the various changes to the RPS program through a series of decisions in this proceeding.<sup>8</sup>

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

This ruling seeks party comment on the staff proposal, which is contained in Attachment A to this ruling, regarding 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

---

<sup>5</sup> See Section 9 of GO 96-B.

<sup>6</sup> General Order 66-D became effective on January 1, 2018, and was implemented by the Commission in D.17-09-023 and D.19-01-028.

<sup>7</sup> Retail sellers include investor-owned utilities (IOUs), electric service providers (ESPs), and community choice aggregators. 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.)

<sup>8</sup> Thus far, decisions issued in this proceeding (and predecessor RPS proceedings) include D.18-05-026 (implementing SB 350 provisions for penalties and waivers); D.17-06-026 (compliance requirements); D.16-12-040 (procurement quantity requirements under SB 350); D.14-12-023 (enforcement rules); D.12-06-038 (compliance rules); D.11-12-020 (procurement quantity requirements); D.11-12-052 (portfolio content categories); D.12-05-035 as modified by D.13-01-041 (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).

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 confidentiality “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.<sup>9</sup>

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 staff proposal therefore does not include detailed proposed language, such as a red-lined version of the current Matrix. This will be developed after considering the parties’ comments and reply comments in response to this ruling.<sup>10</sup> If the Commission chooses to adopt some or all of the elements of the staff proposal, it may also modify relevant parts of D.06-06-066, D.07-05-032, D.08-04-023, D.16-08-024, D.17-09-023 and/or D.19-01-028. Today’s ruling, however, does not propose a specific mechanism or procedural vehicle by which elements of the staff proposal could be adopted and implemented.

#### **4. Comments**

This ruling does not pose specific questions about each proposal within the staff proposal. Rather, commenters are asked to consider and comment on at least the following seven issues with respect to the staff proposal as a whole, and

---

<sup>9</sup> In R.14-11-001, the Commission implemented GO 66-D in “Phase 2A” of the proceeding. “Phase 2B” has been designated as the phase for the Commission to develop lists of information, or “confidential matrices.”

<sup>10</sup> For purposes of this ruling, “parties” means the parties to three proceedings: this proceeding (R.18-07-003), the current IRP proceeding (R.16-02-007), and the confidentiality proceeding (R.14-11-001), 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.

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 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 component 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 staff proposal; commenters doing so should clearly explain the relevance of the additional issue(s).

Opening comments addressing the issues set forth in this ruling may be filed and served not later than March 30, 2020. Reply comments may be filed and served not later than April 17, 2020. 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.

**IT IS RULED** that:

1. Comments addressing the issues identified in the Energy Division staff proposal that is Attachment A to this ruling, may be filed and served not later than March 30, 2020.

2. Reply comments may be filed and served not later than April 17, 2020.

3. Comments and reply comments must be served on the service lists of this proceeding (Rulemaking (R.) 18-07-003), the current integrated resource planning proceeding (R.16-02-007), and the confidentiality proceeding (R.14-11-001).

4. In addition to service by electronic mail, paper copies of comments and reply comments must be promptly provided to Administrative Law Judges Nilgun Atamturk and Manisha Lakhanpal.

Dated February 27, 2020, at San Francisco, California.

/s/ CLIFFORD RECHTSCHAFFEN  
Clifford Rechtschaffen  
Assigned Commissioner



## ATTACHMENT A

### ENERGY DIVISION STAFF PROPOSAL

#### A. Introduction

The staff proposal is presented in sections, keyed to various aspects of the renewable portfolio standard (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 confidentiality “Matrix” set out in Appendix 1 (investor-owned utilities (IOUs)) and Appendix 2 (electric service providers (ESPs)) of Decision (D.) 06-06-066 that address topics taken up in the staff proposal. The Commission included the confidentiality Matrix in D.06-06-066 to provide detailed guidance and to explain the Commission's confidentiality rules for electric procurement and related records.<sup>11</sup>

#### B. 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 in a manner that promotes competition among market participants and adds value to customers.
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

---

<sup>11</sup> Current confidentiality Matrix available at:  
[http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_DECISION/57774.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/57774.PDF).

- 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.

**C. Proposal Background**

The market for RPS-eligible electricity is now nearly two decades old, beginning with the Commission's instructions to utilities for interim procurement of renewable generation resources. (*See, e.g.*, D.02-08-071.) Decision 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 dozens of 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 100 (De León), Stats. 2018, ch. 312. Most notably, SB 100 increases the RPS requirements to 60 percent by 2030 and adopts the state policy that 100 percent of California's electricity must come from renewable and zero-carbon resources by 2045. In addition to significant legislative developments pushing California toward 100 percent renewable and zero-carbon energy, the RPS market itself has undergone major transformation since the RPS program began in 2002, and in the period between the Commission's decision in D.06-06-066, the initial decision in a series of decisions regarding the confidentiality of electric procurement information, and the present. This transformation includes several critical elements.

1. The RPS obligations of all retail sellers are significantly higher. The original RPS goal, set by SB 1078 was that, by December 31, 2017, 20 percent of electricity sold at retail must be from RPS-eligible generation sources.<sup>12</sup> The current goal, set by SB 100, is that 60 percent of all electricity sold at retail (by IOUs, public-owned utilities (POUs), ESPs, and community choice aggregators (CCAs)) must be from RPS-eligible generation sources by December 31, 2030.
2. The RPS mandate, and thus the RPS market, is now effectively statewide. State Bill 2 (1X) replaced the prior goals for POUs with mandatory, enforceable RPS procurement targets like those of other retail sellers, which has continued with future RPS-related legislation. (Section 399.30.)
3. The RPS-eligible resources available to retail sellers have increased substantially.
4. 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 San Diego Gas & Electric (SDG&E): one large solar facility and two landfill gas facilities)<sup>13</sup> and Res. E-4433 (November 10, 2011) (RPS procurement contract of Pacific Gas and Electric Company (PG&E) for one large solar facility).<sup>14</sup>
5. 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 long term procurement plan (LTPP) proceeding (R.04-04-003) the Commission directed the large IOUs to include forecasts of RPS procurement for the next 10 years in their 2006 LTPP

---

<sup>12</sup> This goal was changed to 20 percent 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.

<sup>13</sup> Available at: <http://docs.cpuc.ca.gov/published/Graphics/51972.PDF>.

<sup>14</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).

submissions. (D.04-12-048 at 86.) The successor to the LTPP proceeding, integrated resource planning (IRP), utilizes extensive “RPS portfolios,” extending out for 20 years.

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 RPS program, these proposals reflect the view of staff that greater disclosure of RPS-related information is both feasible and desirable.<sup>15</sup>

**D. Staff Proposal on RPS Compliance Reporting**

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 Section 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.)

State Bill 2 (1X), SB 350 and SB 100 each retain the annual reporting requirement. 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

---

<sup>15</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.

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.)

Energy Division staff, with the participation of the parties, has developed an RPS compliance reporting format that is used by retail sellers. 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 also 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:**

- a. 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 . . ." Accordingly, confidentiality rules, like procurement and compliance obligations, should be applied the same way to ESPs and CCAs as they are to IOUs.

**2. Information for the "front two years"<sup>16</sup> of a retail seller's energy forecast of bundled load may be kept confidential.**

**Rationale:**

- a. The change from annual compliance periods to multi-year compliance periods made the information

---

<sup>16</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

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.

- b. Compliance deficits do not carry over 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.
- c. 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 compliance information would be public for an entire compliance period.
- d. 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.
- e. 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.

---

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 2013, 2014, and 2015.

**3. The “front two years” of a retail seller’s RPS net short position<sup>17</sup> may be kept confidential.**

*[Matrix Section V.C]*

**Rationale:**

- a. The change from annual compliance periods to multi-year compliance periods made 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.
- b. 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.
- c. 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 RPS procurement has occurred.
- d. Increased transparency with respect to retail sellers’ RPS net short will:
  - 1) Make the “RPS portfolios” developed for the IRP proceeding (currently R.16-02-007) and other resource planning efforts (*e.g.*, the Commission’s Resource

---

<sup>17</sup> The renewable net short (RNS) 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.” (R.11-05-005, 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.)

Adequacy program and the California Independent System Operator's (CAISO) Transmission Planning Process) more useful through greater transparency and accessibility; and

- 2) Encourage market certainty and stability by making information about RPS procurement needs more widely and routinely available.

#### **E. Staff Proposal on Price Disclosure**

The IOUs' RPS procurement contracts must be submitted for Commission review and approval. (Section 399.13(d).)<sup>18</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>19</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 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 (Southern California Edison Company (SCE)/Desert Stateline (First Solar) (September 2, 2010)).)

---

<sup>18</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>19</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).



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>20</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 became publicly available on September 30, 2019, more than nine years after it was approved.

- 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:**

- a. 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. (General Order (GO) 96-B § 5.3.) There is no danger to the utility's position on that project from public disclosure of the price.
- b. The RPS market has matured, with a robust procurement process and many potential providers of RPS-eligible generation. In addition, SB 2 (1X) expanded the group of load serving entities (LSEs) subject to binding RPS

---

<sup>20</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) at 2: "For all the strengths underlying the Mojave Solar project, it has one significant weakness — the cost." The cost, however, is currently not publicly available.

obligations, by extending essentially the same requirements that apply to retail sellers to POU's.<sup>21</sup> All California LSEs now therefore participate in the WECC-wide market for RPS-eligible generation resources.<sup>22</sup> The likelihood that disclosure of the price of a contract at the time the Commission considers it will

---

<sup>21</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 eligible renewable energy resources, including renewable energy credits (RECs), 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>22</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).)

have a substantial impact on the large and diversified RPS market is slight.

- c. 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>23</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>24</sup>
  - d. 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 9 years or more 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.
  - e. Disclosing the contract price in the draft resolution, rather than years later, will provide market participants with more current information, thus promoting competition and increasing value to ratepayers.
- 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**

---

<sup>23</sup> See, e.g., PG&E/Shiloh II, Res. E-4161 (April 15, 2008). The 20-year contract with a 150 megawatt (MW) wind farm has a total contract cost of approximately \$885 million. (RPS Executed Projects: Public Data, found at [https://www.cpuc.ca.gov/RPS\\_Reports\\_Data/](https://www.cpuc.ca.gov/RPS_Reports_Data/).)

<sup>24</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 NMV [net market value] methodology. See *Confidential Appendix A for a price and value comparison.*” (Emphasis added.)

**mechanism (RAM))<sup>25</sup>, the contract price is publicly disclosed at the time the advice letter is filed.**

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

**Rationale:**

- a. 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 4.) There is no danger to the utility's position on that project from public disclosure of the price.
  - b. 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.
  - c. Disclosing the contract at the time the advice letter is filed will provide market participants with more current information, thus promoting competition and increasing value to ratepayers.
- 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;
  - rate impact; and
  - 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,

---

<sup>25</sup> The Commission initiated the RAM program in D.10-12-048.

evaluations of proposed RPS projects) is publicly available 30 days after delivery of energy and/or RECs<sup>26</sup> commences, or three years after the Commission approves the contract, whichever comes first.

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

**Rationale:**

- a. 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.
  - b. 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.
  - c. Disclosing the items above at the time they are submitted in the proceeding will provide market participants with more current information, thus promoting competition and increasing value to ratepayers.
- 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 IOU's 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**

---

<sup>26</sup> Section 399.12(h)(1) defines REC 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 megawatt hour (MWh). RECs are currently tracked in the Western Renewable Energy Generation Information System.

**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:**

- a. 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.
- b. 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.
- c. 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.
- d. State Bill 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.
- e. 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).)

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

RPS procurement planning occurs in several contexts: the formal annual RPS procurement plans required by Section 399.13(a)(1); the implementation of

specific RPS procurement programs, such as RAM; the RPS component of the IRP process; 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;
- proposed online date;

- whether the project is new, currently operating, repowered, or restarted<sup>27</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:**

- a. Increased planning coordination within the Commission with respect to the IRP 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.**

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;

---

<sup>27</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>.



- 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:**

- a. Increased planning coordination within the Commission with respect to IRP proceeding and outside the Commission (*e.g.*, CAISO) will require greater transparency in information about proposed RPS-eligible generation projects, particularly among stakeholders seeking to participate in the proceeding who otherwise would not have access to this information.
- 3. Bid prices of all bids received in response to each IOU's RPS solicitation are public when aggregated by resource category,<sup>28</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:**

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

---

<sup>28</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 Utility Owned Generation (UOG) authorization to an IOU is public.**

This information includes:

- forecasts of RPS-eligible energy (megawatt-hours (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:**

- a. 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:**

- a. 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 RNS are public, including project viability and failure assessment assumptions.**

*[Matrix Section: No current Matrix section]*

**Rationale:**

- a. 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.
- b. Making RPS procurement planning and review at the Commission more efficient, transparent 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:**

- a. 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.
- b. Informed decision-making by the Commission will be aided by public availability of important information about RPS procurement contracts under review.
- c. Coordination between RPS and IRP 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.
- d. 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>29</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:**

- a. 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.
- b. SB 695 requires that ESPs "shall be subject to the same terms and conditions applicable to an electrical corporation . . ."

---

<sup>29</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:**

- a. This will ensure consistency of disclosure among Commission contracting rules for RAM and all relevant interconnection processes.
- b. For purposes of public availability of interconnection information, standard contracts should not be treated differently from other RPS procurement contracts.
- c. Earlier disclosure of interconnection information provides the increased transparency necessary to provide more accurate RPS capacity and generation forecasts to IRP 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>30</sup>*

**Rationale:**

- a. The confidentiality rules should be consistent in the timing of public availability of information, without

---

<sup>30</sup> Cf. D.08-04-023, App. C, n. 3.

regard to later changes in a document or compilation of information.

- b. The Commission's confidentiality rules should not drive the decisions retail sellers and their counterparties make with respect to amending RPS procurement contracts.
- c. 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;
  - WECC Bus ID where project is or will be interconnected;
  - known or estimated capital and operating costs; and
  - whether utility ownership will be by turnkey arrangement, buy-out, or utility build.

Any additional information that the assigned Administrative Law Judge (ALJ) determines should be publicly disclosed will be handled as directed by the ALJ.

*[Matrix: Section VII.A]*

**Rationale:**

- a. 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.
- b. 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. (Section 399.14.)

**G. Effective Date and Transition Provisions**

Since this proposal covers a wide range of RPS transactions and documents, it is reasonable to identify those documents to which it would apply immediately upon adoption by the Commission, and those for which application would be phased in.

1. New rules, if any, would apply on the effective date of the Commission decision adopting the new rules to:
  - a. 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;
  - b. 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;
  - c. Any RPS procurement contract that expired prior to the effective date of the decision;
  - d. 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;
  - e. 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;
  - f. Any Commission decision on an application for approval of an RPS procurement contract (whether power purchase agreement (PPA) or UOG) that was issued prior to the effective date of the decision;
  - g. 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;
  - h. Any application seeking Commission approval of RPS procurement (whether PPA or UOG) filed after the effective date of the decision;



- i. 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
  - j. 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:
  - a. 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;
  - b. 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
  - c. 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.

*(End of Attachment A)*