



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED
05/20/20
09:31 AM

May 20, 2020

Agenda ID # 18459
Quasi-Legislative

TO PARTIES OF RECORD IN RULEMAKING 05-06-040:

This is the proposed decision of Commissioner Liane M. Randolph. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's June 25, 2020 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES:gp2

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER RANDOLPH** Mailed
on (5/20/2020)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Implement Senate Bill No. 1488
(2004 Cal. Stats., Ch. 690 (Sept. 22, 2004))
Relating to Confidentiality of Information

Rulemaking 05-06-040

DECISION GRANTING IN PART PETITION TO MODIFY DECISION 06-06-066**Summary**

This decision modifies Decision 06-06-066 to provide that the market-sensitive information of community choice aggregators shall be eligible for confidential treatment consistent with the Load Serving Entities matrix adopted therein.

1. Background

Decision (D.) 06-06-066, as modified by D.07-05-032 and D.08-04-023, establishes procedures for investor-owned utilities (IOUs) and electric service providers (ESPs) to follow in seeking confidential treatment of market-sensitive information that is required to be submitted to the Commission in procurement plans and related documents. In so doing, D.06-06-066 adopted an "IOU Matrix" and an "ESP Matrix" that specify for IOUs and ESPs, respectively, categories of information that should be treated as confidential. In addition, D.06-06-066 provides that stakeholders that are non-market participants shall have access to

IOUs' and ESPs' market-sensitive information as long as they agree to a protective order or confidentiality agreement.¹

By petition filed on January 21, 2020, California Community Choice Association (CalCCA) asked the Commission to modify D.06-06-066 to (1) clarify that the confidentiality guidelines adopted in D.06-06-066 are applicable to community choice aggregators (CCAs), (2) establish a "CCA Matrix" that mirrors the confidentiality matrix applicable to ESPs, and (3) require that stakeholders seeking access to CCAs' market-sensitive information follow the procedures of the California Public Records Act (Public Records Act) rather than the procedures adopted in D.06-06-066.

The Utility Reform Network (TURN) and, jointly, San Diego Gas & Electric Company, Pacific Gas and Electric Company and Southern California Edison Company (the Joint Utilities) filed responses to the petition on February 20, 2020. While TURN and the Joint Utilities generally support modification of D.06-06-066 to clarify the applicability of its confidentiality rules to CCAs, they take issue with CalCCA's proposal to require non-market participants to seek confidential materials from CCAs under the Public Records Act rather than pursuant to the procedures in D.06-06-066. The Joint Utilities also take issue with CalCCA's proposal to apply the ESP Matrix to CCAs, rather than the IOU Matrix. Finally, the Joint Utilities assert that CalCCA's approach of requesting confidential treatment on behalf of multiple CCAs is impermissible and that CCAs must seek confidential treatment for information not in the matrix on an individual basis.

¹ D.06-12-030, as modified by D.11-07-028 and D.11-08-018, defines "market participant" and "non-market participant," and D.08-04-023 adopts a model protective order and non-disclosure agreement. for purposes of access to confidential documents.

CalCCA filed a reply to the responses on March 9, 2020, suggesting that, as an alternative to excusing CCAs from the obligation to provide confidential information pursuant to the procedures in D.06-06-066 and related decisions, the Commission should modify Ordering Paragraph 11 to plainly order CCAs to do so and to add a new conclusion of law that CCAs' compliance with the procedures in D.06-06-066 and related decisions does not constitute a waiver from the exemption from public disclosure under the Public Records Act.

2. CCA Obligations and Protections Pursuant to D.06-06-066 and Related Decisions

It is reasonable and appropriate to modify D.06-06-066 to make clear that CCAs are required to provide confidential information to the Commission and to non-market participants pursuant to the procedures in D.06-06-066 and related decisions and that, pursuant to Gov. Code § 6254.5(b) and (e), CCAs' production of confidential information pursuant to this legal requirement does not constitute a waiver of the exemptions from public disclosure under the Public Records Act.

3. Applicable Matrix

The Joint Utilities argue that the Commission should apply the IOU Matrix to CCAs, rather than the ESP Matrix, as a matter of practicality and administrative efficiency because it covers a broader scope of confidential information that the Commission may require in CCA submissions in the future in the likely event that CCAs will play an increasingly substantial role in California energy procurement. The Joint Utilities further argue that CCAs are more like IOUs than ESPs by virtue of the nature of their customer mix, and that they should therefore be subject to the same confidentiality guidelines in order to ensure a level playing field between IOUs and CCAs and to protect retail customers.

CalCCA argues that the Commission should apply the ESP Matrix to CCAs, rather than the IOU Matrix, because the IOU Matrix includes data that is relevant to rate-regulated IOUs but not to CCAs whose rates the Commission does not regulate. CalCCA submits that, if future CCA data submission requirements come to more closely resemble those of the IOUs, the matrix can be revisited.

While we recognize that much of the information in the IOU Matrix is beyond the scope of information that CCAs submit to the Commission, there is no disadvantage to applying the IOU Matrix to CCAs. The purpose of the matrices is to identify what is market-sensitive information. It is not to identify and does not determine what market-sensitive information must be submitted to the Commission by different types of load-serving entities. Furthermore, there is no apparent reason to treat the same category of market-sensitive information submitted to the Commission differently depending on whether it is submitted by a CCA as opposed to an IOU.² For all of these reasons, we will apply the IOU Matrix to CCAs.

4. CalCCA's Request for Confidential Treatment of CCAs' Information

D.06-06-066 specifies that, if an entity seeks confidential treatment for information that is not included in the applicable matrix, the entity must make a "particularized showing" that its data is entitled to confidential treatment.³ The Joint Utilities assert that this means that individual CCAs must make such requests for confidential treatment on their own behalf and that past instances

² The Joint Utilities note, for example, that IOUs' expired power purchase agreements are public (IOU Matrix Sec. VII.B) whereas certain provisions of ESPs' expired power purchase agreements remain confidential for three years (ESP Matrix Section IV.4.)

³ D.06-06-066 at 53.

wherein CalCCA requested (and the administrative law judge granted) confidential treatment of information on behalf of multiple CCAs does not meet this requirement,⁴ and ask the Commission to direct CCAs accordingly.

To the contrary, the “particularized showing” that is required is with respect to the type of data at issue. It is reasonable to presume that a type of data is entitled to the same treatment across all CCAs unless an individual CCA has waived confidential treatment by having disclosed the data. Furthermore, it would be administratively inefficient for the Commission to entertain repetitive motions by individual CCAs seeking the identical relief. D.06-06-066 does not procedurally preclude CalCCA from seeking confidential treatment of a type of data on behalf of all CCAs.

5. Comments on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the CPUC’s Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

6. Assignment of Proceeding

Liane Randolph is the assigned Commissioner and Hallie Yacknin is the assigned Administrative Law Judge in this proceeding.

Conclusions of Law

1. It is reasonable and appropriate to modify D.06-06-066 to make clear that CCAs are required to provide confidential information to the Commission and to non-market participants pursuant to the procedures in D.06-06-066 and related

⁴ See, e.g., Administrative Law Judge (ALJ) ruling dated May 18, 2018, in Rulemaking (R.) 17-09-020 and ALJ ruling dated March 20, 2019, in R.17-06-026.

decisions and that, pursuant to Gov. Code § 6254.5(b) and (e), CCAs' production of confidential information pursuant to this legal requirement does not constitute a waiver of the exemptions from public disclosure under the Public Records Act.

2. CCAs are not required to request confidential treatment for every category stated in the IOU matrix for that matrix to be applicable to them.

3. There is no apparent reason to treat the same category of market-sensitive information submitted to the Commission differently depending on whether it is submitted by a CCA as opposed to an IOU.

4. D.06-06-066 should be modified to apply the IOU Matrix to CCAs.

5. D.06-06-066 does not procedurally preclude CalCCA from seeking confidential treatment of a type of data on behalf of all CCAs.

O R D E R

IT IS ORDERED that:

1. Decision (D.) 06-06-066, as modified by D.07-05-032 and D.08-04-023, is modified to add the following conclusions of law:

25. It is reasonable to apply the IOU Matrix to CCAs.

26. Pursuant to Gov. Code § 6254.5(b) and (e), CCAs' production of confidential market-sensitive information pursuant to the protections and requirements of this decision and related decisions does not constitute a waiver of the exemptions from public disclosure under the Public Records Act.

2. Ordering Paragraph 1 of Decision (D.) 06-06-066, as modified by D.07-05-032 and D.08-04-023, is modified as follows:

1. Where we find that data are market sensitive pursuant to Pub. Util. Code §454.5(g) or otherwise entitled to confidentiality protection, in most cases, we adopt a window of confidentiality for Investor-Owned Utility (IOU), Community Choice Aggregator (CCA), and Energy Service Provider (ESP) data that protects it for three years into the future, and one year in the past.

3. Ordering Paragraph 2 of Decision (D.) 06-06-066, as modified by D.07-05-032 and D.08-04-023, is modified as follows:

2. We adopt the confidentiality conclusions set forth in the IOU and CCA Matrix and ESP Matrix attached hereto as Appendices 1 and 2 (collectively Matrix, unless otherwise stated). Where a party seeks confidentiality protection for data contained in the Matrix, its burden shall be to prove that the data match the Matrix category. Once it does so, it is entitled to the protection the Matrix provides for that category. The submitting party must file a motion in accordance with Law and Motion Resolution ALJ-164 or any successor Rule, accompanied with any proposed designation of confidentiality, proving:
 - 1.) That the material it is submitting constitutes a particular type of data listed in the Matrix,
 - 2.) Which category or categories in the Matrix the data correspond to,
 - 3.) That it is complying with the limitations on confidentiality specified in the Matrix for that type of data,
 - 4.) That the information is not already public, and
 - 5.) That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

4. Ordering Paragraph 11 of Decision (D.) 06-06-066, as modified by D.07-05-032 and D.08-04-023, is modified as follows:

11. Generally, investor-owned utilities (IOU), community choice aggregators (CCA) and electric service providers (ESP) shall provide intervenor groups that are non-market participants and other parties that the Commission may so designate ~~may have~~ access to confidential IOU, CCA, and/or ESP market sensitive information provided such parties shall comply with Commission directives for protecting the confidentiality of such information.

5. The Investor-Owned Utilities (IOU) Matrix attached to Decision 06-06-066 as Appendix 1 is retitled as "IOU and CCA Matrix."

6. Rulemaking 05-06-040 is closed.

This order is effective today.

Dated _____, at San Francisco, California.