PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED
09/16/21
09:34 AM

September 16, 2021

Agenda ID #19871
and
Alternate Agenda ID #19874
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 18-07-003:

Enclosed are the proposed decision of Administrative Law Judges Manisha Lakhanpal and Carolyn Sisto, designated as the Presiding Officers in this proceeding, and the alternate proposed decision of Commissioner Rechtschaffen. The proposed decision and the alternate proposed decision will not appear on the Commission's agenda sooner than 30 days from the date they are mailed.

Pub. Util. Code § 311(e) requires that the alternate item be accompanied by a digest that clearly explains the substantive revisions to the proposed decision. The digest of the alternate proposed decision is attached.

This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Upon the request of any Commissioner, a Ratesetting Deliberative Meeting (RDM) may be held. If that occurs, the Commission will prepare and publish an agenda for the RDM 3 days beforehand. When an RDM is held, there is a related ex parte communications prohibition period. (*See* Rule 8.2(c)(4).)

When the Commission acts on these agenda items, it may adopt all or part of the decision as written, amend or modify them, or set them aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision and alternate proposed decision as provided in Pub. Util. Code §§ 311(d) and 311(e) and in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed [15] pages.

Comments must be filed pursuant to Rule 1.13 and served in accordance with Rules 1.9 and 1.10. Electronic copies of comments should be sent to Commissioner Rechtschaffen's advisor Sandy Goldberg at Sandy.Goldberg@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

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

AES:lil

Attachment

ATTACHMENT

DIGEST OF DIFFERENCES BETWEEN
ADMINISTRATIVE LAW JUDGES LAKHANPAL AND SISTO'S PROPOSED DECISION AND THE ALTERNATE PROPOSED DECISION
OF COMMISSIONER RECHTSCHAFFEN

Pursuant to Public Utilities Code Section 311(e), this is the digest of the substantive differences between the proposed decision of Administrative Law Judge Lakhanpal (mailed on September 16, 2021) and the alternate proposed decision of Commissioner Rechtschaffen (also mailed on September 16, 2021).

The alternate proposed decision differs from the proposed decision in several areas in Sections 6 and 7, as follows:

1. For contracts requiring Commission approval, the Proposed Decision orders that renewables portfolio standard (RPS)-eligible procurement contracts (price and terms) become public 30 days after the commercial operation date/energy delivery start date or three years from the date of Commission approval, whichever comes first. Under the Alternate Proposed Decision (APD), these RPS-eligible procurement contracts (price and terms) will become public six months after Commission approval.

2. For contracts that do not require Commission approval, the Proposed Decision orders that RPS-eligible contracts (price and terms) shall be public 30 days after the commercial operation date/energy delivery start date or three years after the contract execution date, whichever comes first. Under the APD, these RPS-eligible contracts (price and terms) will become public six months after contract execution.

3. Renewable Energy Credits (RECs) – As per the Proposed Decision, contract prices for REC only contracts from an existing facility will become public 30 days after contract execution, and prices for REC only contracts from new facilities yet to be built will become public 30 days after the commercial operation date. The APD requires that the contract price for REC only contracts from either existing or new facilities become public six months after Commission approval, or six months after contract execution if Commission approval is not required.

4. Competitive Bid Solicitation Information - The Proposed Decision authorizes the release of information on bids that do not result in contracts and RPS-eligible bids that do not reach the shortlisting stage in an investor-owned utility's solicitation. The data in the aggregated form on these bids will be publicly accessible after the final contracts are submitted for CPUC approval when at least three bidders are in the resource category. The Proposed Decision (PD) also authorizes three years of confidentiality period for specific bids and/or individual bidder's bid information and bid evaluation and scoring information after the close of the related solicitation, after which they will be publicly accessible. While the PD and APD agree on aggregating bid data for public disclosure after the final contracts are submitted for CPUC approval when at least three bidders are in the resource category, the APD is different in that it requires individual bidders' bid information and bid evaluation and scoring information to be public one year after the final contracts are submitted to the CPUC for approval (or one year after the solicitation is closed if no contracts are executed).

COM/CR6/lil

ALTERNATE PROPOSED DECISION

Agenda ID #19874
Alternate to Agenda ID #19871
Ratesetting

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER RECHTSCHAFFEN** (Mailed 9/16/2021)

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

DECISION CLARIFYING AND IMPROVING CONFIDENTIALITY RULES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

TABLE OF CONTENTS

Title **Page**

TABLE OF CONTENTS

Title **Page**

DECISION CLARIFYING AND IMPROVING CONFIDENTIALITY RULES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

Summary

Today's decision furthers the California Public Utilities Commission's (Commission or CPUC) long-standing view that the substantial public interest in Renewables Portfolio Standard (RPS) program warrants greater public access to RPS data than other data.[1]

We revise the confidentiality matrix for RPS procurement records adopted in Decision 06-06-066.[2] The new rules shorten the confidentiality period for energy and capacity forecast data used in RPS compliance and procurement reporting from four to three years. The energy and capacity forecast data will be confidential two years into the future, and "one year in the past," instead of three years into the future and one year in the past.[3]

As the average time for renewable projects to come online has shortened to less than three years, the Commission is persuaded to revise rules that hold RPS data confidential for long durations. Furthermore, declining RPS prices and higher commitment to RPS procurement by retail sellers indicate market competitiveness. Presently, most RPS procurement prices and contract terms stay confidential for three years after the commercial operation date/energy delivery start date,[4] thus delaying public access to RPS data for up to five to

[1] *See* Decision (D.) 06-06-066, at 3.

[2] D.06-06-066, modified by D.07-05-032, addresses confidentiality in the context of energy procurement information.

[3] One year in the past is the year of filing the report or RPS data.

[4] When this decision refers to "commercial operation date" this shall also mean the energy delivery start date for a contract with a facility that is already operating.

10 years after contract execution. The new rules will allow earlier public access to RPS contract data.

For contracts requiring Commission approval, this decision orders that RPS-eligible contract price and terms become public six months from the date of Commission approval.

Similarly, for contracts that do not require Commission approval, contract price and contract terms shall be public six months after the contract execution date.

We are authorizing the release of information on RPS-eligible shortlisted bids that do not result in contracts and bids that do not reach the shortlisting stage in an investor-owned utility's (IOU) solicitation. The data in the aggregated form on these bids will be publicly accessible after the final contracts are submitted for CPUC approval when at least three bidders are in the resource category. Specific bids and/or individual bidder's bid information may be kept confidential for one year after the final contracts are submitted to the Commission for approval, after which they will be publicly accessible.

The decision requires that if a contract is amended, this shall not modify the confidentiality requirements that apply to prior versions of the agreement, including the time frame for public information. The amended contract will be public 30 days after the new contract execution date.

This decision continues to balance public disclosure, pro-competitive policy framework, and transparency policy goals with the statutory provisions requiring confidential treatment of market-sensitive RPS procurement data.

For all RPS data, the revised confidentiality matrices, attached as Attachment 2, reflect the provisions of this decision that supersede the provisions

of D.06-06-066. Except as set forth in the revised confidentiality matrices, the provisions of D.06-06-066 continue to apply.

The proceeding remains open.

1. Background

1.1. Procedural Background

On February 27, 2020, the California Public Utilities Commission (Commission or CPUC) issued an Assigned Commissioner's Ruling (ACR) seeking comments on an Energy Division Staff Proposal (Staff Proposal) to make the California Renewables Portfolio Standard (RPS) Program's data more transparent, accessible, and consistent across retail sellers.[5] The Staff Proposal addressed confidentiality in reporting, procurement, and planning to make RPS program information more publicly available. The ACR intended to further the Commission's long-standing view on RPS confidentiality rules adopted in the Decision (D.) 06-06-066.[6]

On March 30, 2020, the following parties filed opening comments on the Staff Proposal as a whole and the specific topics in the proposal related to "confidentiality matrices"[7]: Alliance for Retail Energy Markets and Direct Access Customer Coalition (Joint DA Parties), American Wind Energy Association California Caucus (AWEA), the Commission's Public Advocates Office (Cal Advocates), California Community Choice Association (CalCCA), California

[5] 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.

[6] D.06-06-066 in R.05-06-040 - Interim Opinion Implemented Senate Bill No. 1488, Relating to Confidentiality of Electric Procurement Data Submitted to the Commission.

[7] "Confidential Matrices" is a term describing a Commission determination that specific classifications of information are confidential per Section 3.4 of this General Order (GO). The determination is made prior to the submission of such information and applies broadly to a classification of information.

Energy Storage Alliance (CESA), Defenders of Wildlife (Defenders), Green Power Institute (GPI), Independent Energy Producers Association (IEP), the three electric Investor-Owned Utilities (IOUs) -Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE) (Joint IOUs), Bear Valley Electric Service (BVES), a division of Golden State Water Company, Liberty Utilities (CalPeco Electric) LLC (Liberty CalPeco), and PacifiCorp, d.b.a. Pacific Power (PacifiCorp) (collectively, the California Association of Small and Multi-Jurisdictional Utilities (CASMU)), Solar Energy Industries Association and Large-Scale Solar Association (SEIA/LSA), Shell Energy North America (U.S.), L.P. (Shell Energy), The Utility Reform Network (TURN), and Western Power Trading Forum (WPTF).

On April 17, 2020, Joint DA Parties, CalCCA, the Coalition of California Utility Employees (CUE), Defenders, GPI, Joint IOUs, Shell, CASMU, and TURN filed reply comments.

In Rulemaking (R.) 11-05-005, the predecessor proceeding to R.18-07-003, another ruling was issued on July 1, 2013[8] seeking party comments on ways to improve data accessibility and transparency in the RPS program. In response to that ruling, parties filed comments and reply comments. The Commission did not issue a decision at that time because the focus turned to implementing Senate Bill (SB) 350 (De León), Stats. 2015, ch. 547 and SB 100 (De León), Stats. 2018, ch.312, which increased RPS procurement requirements and added other procurement limitations.

[8] *See* Ruling issued on July 1, 2013 in R.11-05-005, which is a predecessor proceeding to R.18-07-003. The prior ruling and comments were filed in R.11-05-005.

1.2. Purpose of Clarifying and Improving RPS Data Confidentiality Rules

In 2006, the Commission adopted D.06-06-006 to implement S.B. No. 1488 (2004 Cal. Stats., Ch. 690 (September 22, 2004). D.06-06-066 adopted the investor-owned utilities (IOU) matrix (IOU Matrix) and the Energy Service Provider (ESP) matrix (ESP Matrix) to support meaningful public participation and open decision-making. These matrices provide detailed and standardized guidance to parties concerning the confidentiality of data at the Commission. The direction in each of these appendices has ensured a consistent approach to public disclosure.

In D.06-06-066, the Commission determined treatment for information relating to renewable energy procurement. Due to strong public interest in RPS, the Commission provided greater public access to RPS data than other data.[9] In adopting the confidentiality matrices, the decision noted that no specific statute governs the confidentiality of RPS data and that "RPS information should be public (except the price term in contracts, which may be confidential)."[10]

On July 16, 2020, the Commission adopted D.20-07-005, which modified D.06-06-066 to provide that the market-sensitive information of community choice aggregators (CCAs) are eligible for confidential treatment consistent with the ESP Matrix.

R.14-11-001, the only other proceeding in which the Commission reviewed confidentiality matrices, was closed on August 27, 2020, via D.20-08-031. Even though RPS confidentiality data was not in scope in R.14-11-001, it is worth noting that D.20-08-031 did not modify the D.06-06-066 for energy procurement

[9] D.06-06-066 at 59.

[10] D.06-06-066 at 63, 65.

and renewables documents but only added a baseline for consideration of the confidential treatment of critical infrastructure information.

As noted in the 2013 Ruling and the ACR, balancing transparency and data confidentiality protection is crucial. As a "Public Utilities Commission," we have to ensure transparency in our decision-making process and regulation of the public utilities under our jurisdiction. At the same time, the Commission has various statutory obligations regarding confidentiality, including those set out in California Public Utilities (Pub. Util.) Code Sections 454.5(g) and 583. D.06-06-066, as modified by D.07-05-032, D.08-04-023, D.16-08-024, D.17-09-023, D.19-01-028, D.20-07-032, and/or D.20-08-031, is the comprehensive expression of the Commission's policies concerning the confidentiality of information related to electricity procurement. GO 96-B includes procedures for claims of confidentiality of data in advice letters.[11] GO 66-D[12] addresses the public availability of Commission records and documents. Resolution L-436 (February 13, 2013) sets forth the Commission's policies about the general availability of safety-related information.

2. Issues before the Commission

The ACR asked parties to comment on the issues identified in the Staff Proposal with these overarching questions in perspective.

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

[11] *See* Section 9 of GO 96-B.

[12] GO 66-D became effective on January 1, 2018, and was implemented by the Commission in D.17-09-023 and D.19-01-028. GO 66-D Revision 1 superseded GO 66-D effective February 1, 2019.

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?

More specifically, the Staff Proposal presented four topic areas under which it provided the need to clarify and improve the confidentiality rules governing RPS data. The Staff Proposal also noted, the applicable elements in the current confidentiality matrix of D.06-06-066 as appropriate.

The specific topics considered for refining RPS confidentiality rules are as follows:[13]

2.1. Compliance Reporting on RPS data

The Staff Proposal recommends standardizing rules across all retail sellers and shortening the window of confidentiality on load forecast and RPS Net Open Position.

2.2. Price Disclosure

The Staff Proposal recommends making IOUs' RPS contract prices available when the Commission receives the contract for approval, or shortly after that, or in the case of an ESP or a CCA, six months after signing the contract or 30 days after commercial operation date or energy deliveries.

2.3. RPS Procurement Competitive Bid Solicitation and Contracts; Planning Requirements

The Staff Proposal seeks to expand bid solicitation information and contract terms that will become public. It also proposes to make contract terms and project information available on an accelerated timeframe compared to current rules.

[13] Additional detail on each topic in the Staff Proposal can be found in Section 4 to 8 below.

2.4. Effective Date and Transition Provisions

The Staff Proposal includes different scenarios and implementation timelines to make the new rules effective after the decision is adopted by the Commission.

3. Legal Analysis of Parties' Confidentiality Claims

The ACR asked parties to comment on any legal issues concerning the Staff Proposal. The ACR also directed parties to suggest changes to the proposal to reduce or eliminate the legal issues and any changes to the existing legal framework to address issues identified in the Staff Proposal.

3.1. Parties' Comments

The Joint IOUs, CASMU, Joint DA Parties, Shell, AWEA, and IEP rely on assertions that RPS contract prices, net open position, and project evaluation/status data are market sensitive and trade secret information that is protected from disclosure under the California Public Records Act (CPRA), Section 454.5(g), Section 583 and Gov. Code § 6254(k). The parties argue that the Commission cannot change the window of confidentiality in the IOU or ESP Matrices of D.06-06-066 without violating the code sections. Joint DA Parties contend that their contracts are protected under the Contract Clause (U.S. Const. Art. I, § 10, cl. 1), Commerce Clause, privacy protection laws, and the Administrative Procedures Act.

3.2. Applicable Laws Related to Public Access of Commission Records

Compliance reporting to the Commission and the Commission's determination of whether to disclose information implicates California constitutional law; the CPRA (which applies to all state agencies), and a

combination of legal requirements in the California Public Utilities Code[14] (which apply only to the Commission). We evaluate the Staff Proposal, party comments, and replies in this proceeding with the following requirements in mind.

3.2.1. The Public's Right to Information

The legislature has declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."[15] Further, the Commission has determined that the public has a right to access most Commission records.[16]

The California Constitution (Cal. Const.), Article I, § 3(b)(1) states:

> The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.[17]

Cal. Const., Article 3(b)(2) states that statutes, court rules, and other authorities limiting access to information must be broadly construed if they further the people's right of access and narrowly construed if they restrict the right of access.[18] Rules that limit access must be adopted, with findings

---

[14] Referred to hereafter as the Public Utilities Code or Pub. Util. Code.

[15] Cal. Gov't Code § 6250.

[16] *See* D.17-09-023, *Phase 2A Decision Adopting General Order 66-D and Administrative Processes for Submission and Release of Potentially Confidential Information*, at 2-3, 9-12.

[17] *See e.g.*, *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 328-329.

[18] Cal. Const., Article 1, § 3(b)(2): "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest." (*See*, *e.g.*, *Sonoma County Employee's Retirement Assn. v. Superior Court (SCERA)* (2011) 198 Cal.App.4th 986, 991-992.)

demonstrating the interest protected by the limitation and the need for protecting that interest.[19]

The CPRA requires that public agency records be open to public inspection unless they are exempt from disclosure under the provisions of the CPRA.[20] "Public records" are broadly defined to include all records "relating to the conduct of the people's business"; only records expressly excluded from the definition by statute or of a purely personal nature fall outside this definition.[21] Since records received by a state regulatory agency from regulated entities relate to the agency's conduct of the people's regulatory business, the CPRA definition of public records includes records received by, and generated by, the Commission.[22]

When an agency decides to withhold a record in response to a CPRA request, it must do so based upon the specified exemptions listed in the CPRA or a showing that the public interest in maintaining the confidentiality of the facts of the particular case outweighs the public interest in disclosure.[23]

---

[19] *Ibid.*

[20] *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 370 ("The Public Records Act, Section 6250 *et seq.*, was enacted in 1968 and provides that "every person has a right to inspect any public record, except as hereafter provided." (§ 6253, subd. (a).) We have explained that the act was adopted "for the explicit purpose of 'increasing freedom of information ' by giving the public 'access to information in possession of public agencies.' "(*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651 [citation omitted]).")

[21] *See e.g., Cal. State University v. Superior Court* (2001) 90 Cal.App.4th 810, 825.

[22] *See* Gov. Code § 6252(e).

[23] Gov. Code § 6255(a) ("The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.")

The CPRA favors disclosure, and CPRA exemptions must be narrowly construed.[24] Unless a record is subject to a law *prohibiting* disclosure, CPRA exemptions are permissive, not mandatory; and thus, while the CPRA exemptions allow nondisclosure, they do not prohibit disclosure.[25] This means that even if a record may fall within a CPRA exemption, the agency may still disclose the record if the agency believes no public interest would be served by withholding the record and/or that disclosure is in the public interest.

The CPRA requires the Commission to adopt written guidelines for access to agency records and requires that such regulations and policies be consistent with the CPRA and reflect the intention of the legislature to make agency records accessible to the public.[26] GO 66-D, effective February 1, 2019, constitutes the Commission's current guidelines for access to its records and reflects the intention to make Commission records more accessible.[27]

---

[24] Cal. Const., Article 1, § 3(b)(2), *supra*. *See e.g., American Civil Liberties Union of Northern California v. Superior Court* (*ACLU*) (2011) 202 Cal.App.4th 55, 67; and *SCERA*, *supra*, 198 Cal.App.4th at 991-992.

[25] *See e.g.*, *CBS, Inc. v. Block*, *supra*, 42 Cal.3d at 652; *Amgen, Inc. v. Health Care Services*, (2020) 47 Cal.App.5th 716, 732; *ACLU*, *supra*, 202 Cal. App. 4th at 67-68 fn. 3; Gov. Code § 6253(e); *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 905-906; *Black Panthers v. Kehoe* (1974) 42 Cal.App.3d 645, 656; *Re San Diego Gas & Electric Company* (*SDG&E*) (1993) 49 Cal.P.U.C.2d 241, 242; and D.05-04-030, at 8. *See also*, the penultimate sentence in Gov. Code § 6254: "This section does not prevent any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law."

[26] Gov. Code § 6253.4(b) ("Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public.…").

[27] *See* D.19-01-028 – a second Phase 2 decision, adopting Revision 1 to GO 66-D, which in turn refined the Commission's process to protect the public's right to access government information under the California Constitution and the CPRA, provide the information submitter's right to confidential protection when afforded by law, and ensure the Commission can release information in the course of its activities. GO 66-D Revision 1 superseded GO 66-D effective February 1, 2019.

3.2.2. CPUC GO 66-D Requirements for Requesting Confidential Treatment of Information and an Exemption to the Requirements of D.06-06-066

GO 66-D sets forth the Commission's procedures for implementing the CPRA. D.16-08-024 modified the rules in GO 66-C and required utilities to provide a more robust and detailed showing to receive confidential treatment. That decision governed confidentiality claims until January 1, 2018, when GO 66-D took effect.[28] GO 66-D incorporates the process outlined in D.16-08-024.

GO 66-D, § 3, sets forth the requirements for submitting information to the Commission under a claim of confidentiality. GO 66-D, § 3.2, states:

> An information submitter bears the burden of proving the reasons why the Commission shall withhold any information, or any portion thereof, from the public.

To request confidential treatment of information submitted to the Commission, an information submitter must satisfy the following requirements:

a. designate what portions of a document are confidential;
b. state a specific legal basis for the claim (*e.g.* not just "Section 583");
c. provide a declaration in support of the claim; and
d. provide a name and email address of a person to contact regarding potential release of information.[29]

GO 66-D further states that if the information submitter cites Gov. Code § 6255(a) (commonly known as the "public interest balancing test") as the legal authority for withholding a record from public release, then the information

[28] *See* GO 66-D, § 3.1. Information submitted between September 26, 2016 to December 31, 2017 is governed by D.16-08-024. GO 66-D Revision 1 superseded GO 66-D effective February 1, 2019.

[29] *See* GO 66-D, § 3.2.

submitter must demonstrate with granular specificity on the facts of the particular information why the *public* interest served by not disclosing the record clearly outweighs the *public* interest served by disclosure of the record. A *private* economic interest alone is not enough to establish a *public* interest sufficient to withhold a document from disclosure. Accordingly, information submitters that cite Section 6255(a) as the basis for the Commission to withhold the document and rest the claim of confidentiality solely on a *private* economic interest will not satisfy this section's requirements.[30]

Currently, there is a limited exemption from following the procedures of GO 66-D, § 3.2, for information designated as confidential in the Matrix approved in Modified D.06-06-066.[31]

In formal proceedings, the Administrative Law Judge (ALJ) and assigned Commissioner have discretion about requirements the parties must follow for confidential treatment of information submitted in the proceeding.[32] Nevertheless, parties requesting confidential treatment in a formal proceeding must meet the burden to demonstrate particular facts and citations to specific laws why the Commission should not disclose the alleged confidential information.[33]

---

[30] *See* D.17-09-023, at 22, and Appendix A, GO 66-D, § 3.2; D.20-03-014 at 24.

[31] There are other limited exceptions to the application of GO 66-D Section 3.2: (1) Section 3.3, which details procedures for submissions in formal proceedings, and (2) Section 3.4, which describes the process for a preemptive determination of confidentiality in a decision (Section 3.4).

[32] *See* GO 66-D, § 3.3.

[33] *See* CPUC Rules of Practice and Procedure, Rules 11.1 and 11.4.

3.2.3. Pub. Util. Code § 583

Section 583 also governs access to records. Section 583 states in relevant part:

> No information furnished to the Commission by 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.

Section 583 clarifies that even when information is submitted with a claim of confidentiality, the Commission or a Commissioner can release that information in the course of a proceeding.

3.2.4. Pub. Util. Code § 454(g)

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.

3.2.5. The Commission Usually Limits Duration of Confidential Treatment of Proprietary Business Information

In general, the Commission does not maintain in perpetuity confidential treatment of information based on an entity's assertion that the information is proprietary business-sensitive information. The Commission usually restricts the confidential treatment of energy procurement data to three years in the future,

implicitly recognizing that the business sensitivity of such information usually diminishes over time.

D.06-06-066 adopted a window of confidentiality of three years into the future and one year in the past. It did not authorize data to remain confidential in perpetuity. Additionally, the Commission recognized public interest in the RPS program and provided greater public access to RPS data than other data.

3.3. Discussion – Staff Proposal is Lawful and Commission has jurisdiction to adopt rules and procedures

Pursuant to Cal. Const., Article I, § 3(b)(1), the public has a constitutional right to access most government information. Cal. Const., Article 1, § 3(b)(2) states that statutes, court rules, and other authorities limiting access to information must be broadly construed if they further the people's right of access and narrowly construed if they limit the right of access.

In analyzing whether a claim of confidentiality has merit, the Commission does not look to Section 583, "because nothing in the statute addresses what types of records should and should not be confidential."[34] Section 583 sets forth a process for dealing with confidentiality claims and does not contain any substantive rules on what is and is not appropriate for protections. Therefore, we disagree with the parties that the Commission's reconsideration of confidentiality rules for RPS data violates Section 583.

When GO 66-D was adopted, the Commission reconciled the legal requirements to align the public's right to access government information under the California Constitution and the CPRA, the information submitter's right to confidential protection when afforded by law, and the Commission's need to

[34] D.06-06-066 at 27-28.

release information in the course of its activities.[35] We recognize that the CPRA creates an exception to the general requirement that government records be open by protecting trade secrets.[36] However, CPRA favors disclosure, and CPRA exemptions must be narrowly construed.[37]

Regarding trade secrets, under Evidence Code Section 1060, the Uniform Trade Secrets Act, trade secrets consist of:

> [I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The Joint DA parties contend that the information contained in RPS contracts are "trade secrets" and disclosing them is prohibited under the California Public Records Act. As explained above, a "trade secret" is a precise legal status that applies to information that "derives independent economic value, actual or potential" from "not being generally known to the public or to other persons who can obtain economic value from its disclosure or use."[38] D.06-06-066 contains a detailed explanation of why the RPS "market sensitive" data are not trade secrets. Our recent decision, D.20-12-021, further clarifies that

[35] *See* D.17-09-023 at 16.

[36] Cal. Gov't Code §§ 6254(k), 6254.7(d).

[37] Cal. Const., Article 1, § 3(b)(2), *supra*. *See, e.g., American Civil Liberties Union of Northern California v. Superior Court* (ACLU) (2011) 202 Cal.App.4th 55, 67; and *SCERA*, *supra*, 198 Cal.App.4th at 991-992.

[38] Evidence Code Section 1060, the Uniform Trade Secrets Act.

"trade secret" is something beyond confidential or important business information. A trade secret:

> … differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new model or the like A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article.[39]

The Joint DA parties have not provided any additional information to persuade us to change the Commission's previous conclusion that this RPS contract data are not "trade secrets."

As for market-sensitive data, the Commission had determined that only information that would have a material impact on a procuring party's market price for electricity is protected.[40] The D.06-06-066 determined that to be deemed "market sensitive" in the context of Section 454.5(g), information must be material, and information is material if it affects the market price an energy buyer pays for electricity.[41]

We agree with CalCCA's reply comments on the Staff Proposal that D.06-06-066, as amended by D.07-06-032, does not find that the periods specified in the matrix are the absolute minimum that must be imposed to avoid violating

[39] D.20-12-021 at 20-21 (citing *Cal Francisco Inv. Corp. v. Vrionis*, 14 Cal. App. 3d 318, 322, 92 Cal. Rptr. 201, 203 (1971)).

[40] D.06-06-066 at 4.

[41] D.06-06-066 at 42 and 43.

Section 454.5(g) and Government Code Section 6254(k). Moreover, we find that the Staff Proposal is not recommending changes to the confidentiality status of RPS data. It seeks to shorten the timing RPS data is kept confidential to allow greater public access as intended in D.06-06-066.[42]

Therefore, as we review each topic in the following sections, we will start with presumptions that information should be publicly disclosed, D.06-06-066 intended to grant greater access to the RPS data, and that any party seeking confidentiality bears a strong burden of proof.

Regarding arguments about the Contracts Clause of the U.S. Constitution, the Joint DA parties are correct that these new rules requiring disclosure of some prices and other terms of some ESP contracts can potentially implicate the Contracts Clause. There is a three-step analysis for determining whether a state law or regulation violates the Contracts Clause. The threshold question considers whether the law "in fact, operate[s] as a substantial impairment of a contractual relationship."[43] If the answer is yes, then the analysis considers two more factors. First, whether the state has a "significant and legitimate public purpose" for the regulation to ensure that it is "exercising its police power, rather than providing a benefit to special interests."[44] And second, "whether the adjustment of 'the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption.'"[45] Unless the state entity " is a contracting

[42] *See* also, the penultimate sentence in Gov. Code § 6254: "This section does not prevent any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law."

[43] *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1147 (9th Cir. 2004).

[44] *Id.* at 411-12.

[45] *Id.*

party, 'as is customary in reviewing economic and social regulation . . . courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.'"[46]

The threshold inquiry, whether the regulation substantially impairs a contractual relationship, has three components: "whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial."[47] Critically, the question is not whether a contractual relationship exists, but whether there was a "contractual agreement regarding the specific . . . terms allegedly at issue."[48] To the extent that a contract has a specific provision regarding confidentiality of the contract terms, the Joint DA parties have not explained how the new Commission requirements for public disclosure will "substantially impair" the performance of the other obligations of the parties under the contract. In addition, as discussed below, the new Commission requirements will apply to new contracts, so parties can either conform to the terms or agree to different terms with the knowledge of the conflict and the overriding obligation to comply with Commission rules.

Moreover, the prohibitions of the Contract Clause are not absolute. Instead, they "must be accommodated to the inherent police power of the State 'to safeguard the vital interests of its people.'" [49] Even if the Joint DA parties could meet the threshold showing that these disclosures would substantially impair their contracts, this is counterbalanced by the Commission's significant

---

[46] *Id.*

[47] *Id.* (quoting *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 186, 117 L. Ed. 2d 328, 112 S. Ct. 1105 (1992))).

[48] *Id.* at 187.

[49] *RUI One Corp.* 371 F.3d at 1147 (citing *Energy Reserves Group, Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 410, 74 L. Ed. 2d 569, 103 S. Ct. 697 (1983)).

and legitimate public interest in promoting the transparency in RPS. States "may impose a substantial impairment on an existing contractual obligation so long as it has a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem.[50] The Joint DA parties reject the interest in promoting transparency as not legitimate.[51] These dismissive attitudes about the public and ratepayers' rights and the need for transparency neglect the fact that maximizing transparency is a goal for all state agencies and promotes the interests of the public, including the ratepayers. Disclosing RPS prices and contract terms will promote transparency and provide market participants with more current information, thus promoting competition and increasing value to ratepayers. These regulatory changes are necessary now. This decision comes as part of the Commission's larger mandate to ensure that consumers have safe, reliable energy deliveries at reasonable rates, support renewables and clean climate goals, and promote the health of California's economy.

Regarding the interstate commerce clause, the Joint DA Parties are correct that Congress was granted the power to regulate commerce between states. This power works as a check on state power, denying " States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce."[52] Under this so-called dormant commerce clause, if the law or regulation discriminates against out-of-state entities, it is subject to strict scrutiny. If not, the

[50] *Crossley v. California*, 479 F. Supp. 3d 901, 920 (S.D. Cal. 2020) (quoting *Energy Reserves Grp., Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 412, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983)).

[51] Joint DA Parties Comments at 17.

[52] *Or. Waste Sys., Inc. v. Dep't of Envtl. Quality of State of Or.*, 511 U.S. 93, 98, 114 S. Ct. 1345, 128 L. Ed. 2d 13 (1994).

laws or regulations are subject to a less rigorous balancing test.[53] A statute may discriminate against out-of-state interests in three ways: "(a) facially, (b) purposefully, or (b) in practical effect."[54]

The parties are also correct that energy contracts between the ESPs and other providers regulate activities that affect interstate Commerce "such that Congress could regulate the activity."[55] But this alone does not make these regulations invalid. Looking at the balancing test, the regulations here do not facially discriminate against out-of-state ESPs and are not *per se* invalid. They lack any mention of the states where the parties are located and would apply equally regardless of where the parties are based. Second, there is no basis for claiming that this regulation intends to discriminate against out-of-state parties. The rules are neutral and uniformly apply to all parties in the RPS proceeding. The Commission has long welcomed and depends on the participation of out--of--state suppliers to continue its progress toward the ambitious goals of the RPS program. Finally, these regulations would also withstand the *Pike* balancing test because they apply "even-handedly to effectuate a legitimate [] public interest" and the impact on interstate commerce is only incidental so long as "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits."[56] Although Joint DA parties claim that the burden on interstate commerce is excessive, they offer little in the way of support for this position.

---

[53] *Nat'l Ass'n of Optometrists & Opticians Lenscrafters, Inc. v. Brown*, 567 F.3d 521, 524-25 (9th Cir. 2009).

[54] *Id.* at 525.

[55] *Nat'l Ass'n of Optometrists & Opticians* , 567 F.3d at 524 .

[56] *Nw. Cent. Pipeline Corp. v. State Corp. Comm'n*, 489 U.S. 493, 525-26 (1989) (quoting *Pike v. Bruce Church*, 397 U.S. 137, 142).

Finally, the Joint DA parties argue that the Commission's proposed regulations releasing information currently treated as confidential may run afoul of the California Administrative Procedure Act (California Government Code Section 11340 *et seq.*).[57] They suggest that the affected ESPs, and suppliers may seek judicial review of these regulatory changes. Contrary to this assertion, the California Administrative Procedures Act does not prevent the proposed regulations and changes in this commission proceeding. The Commission is exempt from these judicial review requirements.[58]

Therefore, we find that the Staff Proposal is lawful, and the Commission has the authority to implement the revised confidentiality rules in the RPS program.

4. RPS Compliance Reporting – Confidentiality Standards should be the same for all retail sellers

This section will discuss the Staff Proposal as it applies to the RPS compliance report format only. The decision will apply to (a) the annual RPS Compliance Report due on August 1 of each year that shows progress towards the RPS procurement requirements and Final RPS Compliance Reports, (b) RPS Procurement Plan according to Sections 399.13(a)(1), which are forward-looking, and (c) any future compliance requirements applicable within the RPS program.

4.1. Staff Proposal Summary

The Staff Proposal states, "Section 399.12(j)(3) requires that ESPs "shall be subject to the same terms and conditions applicable to an electrical corporation . . ." Accordingly, confidentiality rules, like procurement and

[57] Joint DA Parties comments at 22.

[58] *See* Gov. Code Section 11351.

compliance obligations, should be applied the same way to ESPs and CCAs as they are to IOUs."

4.2. Parties' Position

CalCCA and Joint IOUs support that confidentiality rules like procurement and compliance obligations should apply in the same way to ESPs and CCAs as to IOUs.[59] The Joint IOUs contend that there is no reason that any retail seller[60] should have more, or less, protection for confidential information.[61] CalCCA states that while the Staff Proposal would substantially increase the amount of RPS procurement information that is public, it generally succeeds in achieving this balance by ensuring that limitations on confidentiality apply equally across the IOUs, ESPs, and CCAs.[62]

Amongst the nonmarket participants[63], TURN, GPI, and Defenders support the Staff Proposal's recommendation to set the same standards of confidentiality across all retail sellers.[64] TURN asserts that the recent Legislative authorization for an expansion of Direct Access, and likely efforts by ESPs and large customers to push for a further reopening of this market, the Commission should take this opportunity to require far more comprehensive public disclosure of the RPS procurement serving this sector of the market.[65] GPI states

[59] Cal CCA Comments at 4; Joint IOU Comments at 29.

[60] Several parties use load serving entity in reference to retail sellers, for consistency this decision will use the term retail sellers.

[61] *Id.*

[62] Cal CCA Comments at 3.

[63] D.06-12-031 at 36-38- defines who is a market participant and a non-market participant.

[64] TURN Comments at 1; GPI Comments at p. 2; Defenders Comments at 3.

[65] TURN Comments at 2.

that customers, stakeholders, and third parties must monitor the CCAs' progress to ensure they achieve statewide RPS goals.[66]

The Joint DA Parties and Shell disagree and suggest that confidentiality rules applied to IOUs concerning RPS submissions should not apply to CCAs and other ESPs.[67] The Joint DA Parties assert that the Staff Proposal is erroneous because it ignores the Public Utilities Code and prior Commission determinations regarding the Commission's limited jurisdiction over ESP wholesale procurement and retail transactions.[68] The Joint IOUs respond to the Joint DA Parties' comments and, in their reply comments, state that the requirement for RPS procurement contracts pricing, terms, and conditions does not appear to be related to Commission's jurisdiction over the IOUs retail rates, but instead its jurisdiction over the RPS program.[69]

Shell asserts that the terms of ESPs' wholesale procurement contracts are not subject to Commission jurisdiction.[70]

4.3. Discussion – Process of Claiming Confidentiality and Standards of Confidentiality

Establishing a consistent process to claim confidentiality for RPS compliance reports across all retail sellers is within the Commission's jurisdiction. Section 380(e) requires "[e]ach load-serving entity shall be subject to the same requirements for . . . the renewables portfolio standard program that are applicable to electrical corporations pursuant to this section, or otherwise

[66] GPI Comments at 2.

[67] Shell Opening Comments at 8 and Joint DA Parties Opening Comments at 2-5.

[68] Joint DA Comments at 23.

[69] Joint IOU Reply Comments at 18.

[70] Shell Comments at 8-9.

required by law, or by order or decision of the commission."[71] The authority also exists under Section 399.12(j)(2) and (3) requires that CCAs and ESPs "shall be subject to the same terms and conditions applicable to an electrical corporation…"

We agree with the staff's recommendations that confidential treatment of information from compliance reports should be the same for all retail sellers. It allows us to establish a standard process for the RPS program.

Pursuant to D.06-06-066, the Commission grants all retail sellers the same confidentiality process regardless of who claims entitlement to protection and sets the burden of showing that information meets one of the various statutory protections upon the data holder.[72] Parties' comments do not convince us to modify the Commission's guidance and give preferential treatment to RPS compliance data based on the market participant's status. We find that authorizing the same level of confidentiality treatment to all retail sellers for their RPS compliance report data is consistent with guidance in D.06-06-066. Applying the same confidentiality standards for RPS compliance report data will promote an equal level of transparency across all participating retail sellers and minimize the administrative burden to review RPS data confidentiality on a case-by-case basis.

For confidentiality requests outside of the confidentiality matrix, D.06-06-066 also provides the Commission the flexibility to make decisions based on the specific context and nature of the data, and the burden of proof lies with the retail sellers. To secure a confidential status, they must demonstrate evidence

[71] Joint IOU Comments at 29.

[72] D.06-06-066 OP 10 at 82-83.

about the type of the data and the harm that will result from release if it seeks special confidentiality status.

Therefore, we continue to adopt the guidance in D.06-06-066 that the process for dealing with confidential documents should be the same regardless of who claims entitlement to protection, and parties seeking confidential treatment bear the burden of proving entitlement to such treatment. However, we also note the conclusion in D.06-06-006, which states: "There may be differences between parties that justify different substantive treatment of data. No type of entity (*e.g.*, IOU or ESP) shall receive greater confidentiality for its data merely because it is such an entity."[73]

5. Load Forecasting and RPS Net Short Position

This issue concerns the confidentiality period for the energy and capacity forecast for load and RPS net short (RNS) position.[74] The Staff Proposal lists the issues separately, but they are interconnected, and we review them as a paired proposal issue. Under the current rule, retail sellers use a four-year window of confidentiality that allows them to hold energy and capacity forecast and RNS position data confidential for three years into the future and "one year in the past."[75] In practice, the "one year in the past" is the year of filing the report.

5.1. Staff Proposal Summary

The Staff Proposal recommends decreasing the confidentiality time horizon for total energy and capacity forecast and RNS position data from the three future years to two future years. The proposal states that a retail seller's

[73] *See* D.06-06-066, COL 23.

[74] RPS net short is defined the amount of new renewable generation necessary for retail sellers to meet or exceed the renewable Procurement Quantity Requirements. *See* ALJ's May 21, 2014 Ruling, ALJ's Ruling on Renewable Net Short, issued in R.11-05-005.

[75] D.06-06-066 OP 1; Section VI of the IOU Matrix.

present compliance position does not necessarily relate to future load projections. The Staff Proposal argues that the current confidential period equals or exceeds the length of any RPS compliance period in practice, making it impossible for the public to access compliance information for an entire compliance period. It adds that due to the long-term nature of RPS procurement, protection of information about the next two future years of bundled load and RNS projections is adequate to avoid RPS market problems in the near term. The Staff Proposal states that given the significant investment costs in renewable projects, the customers should be able to access information on RPS procurements. Lastly, the Staff Proposal contends that two future years of confidentiality period would enable more transparent decision-making and allow the Commission to effectively fulfill its responsibilities to report to the Legislature on the progress of the RPS program.

5.2. Parties' Position

CalCCA specifically supports the Staff Proposal's goal of reducing the number of years a retail seller's forecast of its retail sales and net short position will be treated as confidential.[76]

TURN supports the Staff Proposal and states that CCAs typically do not redact load forecasts or estimates of near-term net short positions.[77] It contends that most ESPs have taken advantage of existing confidentiality protections to shield many details from disclosure for the maximum period permitted under Commission rules.[78]

[76] CalCCA Comments at 3.

[77] TURN Comments at 2.,

[78] *Id*.

GPI's comments support the Staff Proposal to accelerate the disclosure of an additional year of forecasted RPS procurement for all retail sellers.[79] GPI states that reducing the confidentiality restrictions from a forecasted three future years to the "front two years" will better assess near-term to mid-term compliance at the statewide level.[80]

The Joint IOUs,[81] Shell,[82] Cal Advocates,[83] CASMU[84] comments specifically oppose the shortened confidentiality periods proposed in the Staff Proposal stating that Staff Proposal would increase prices for bundled customers and DA customers. In summary, the opposing parties contend that disclosing load data and RPS net short information will affect market pricing because the market will know the IOU's demand and seek higher renewable energy prices.[85] They assert that RNS information is "market sensitive" and a trade secret that must be protected under Section 454.5(g) and Public Records Act, Govt. Code § 6254(k) for a period long enough to ensure that disclosure will not impact market prices.[86]

The Joint IOUs add that the three-future-year period of protection, adopted in D.06-06-066, reflects the view that three years is the shortest time within which new generation can come online, and a period less than three years

[79] GPI Comments at 2.

[80] GPI Comments at 1.

[81] Joint IOU Comments at 18-22.

[82] Shell Comments at 4-6.

[83] Cal Advocates Comments at 6.

[84] CASMU at 16-17.

[85] Joint IOU Comments at 13-16.

[86] Joint IOU Comments at 20.

could allow for market manipulation since new generation would be unavailable to offset energy price impacts.[87]

GPI's reply comments suggest that the existing disclosure of a retail seller's past year load forecast and net short position data within the same compliance period is not different from the newly proposed two future years confidentiality recommendation in the Staff Proposal. GPI suggests a sliding confidentiality timeframe that would allow the current year and the three forward years to remain confidential in a four-year compliance cycle.[88]

CalCCA's reply comments suggest reevaluating the factual assertion that a net short position should be confidential for three years because that's the minimum amount of time it takes for a new generation to come online. It recommends reevaluating it based on the substantial amount of additional renewable generation constructed since 2006 and in light of the change from an annual RPS structure to multi-year compliance periods.[89]

5.3. Discussion – Procedures to Ensure the Confidentiality of Future Load Forecast and RNS Position

Pursuant to Section 454.5(g), D.06-06-066 adopted a window of confidentiality for energy and capacity forecast and Net Short Position data that protects it for three years into the future and one year in the past at most.[90] In adopting future three years as confidential, the Commission relied on

[87] Joint IOU Comments at 15-16.

[88] GPI Reply Comments at 2-3.

[89] CalCCA Reply Comments at 7.

[90] D.06-06-066, Appendix 1, IOU Matrix Section V and VI.

information that three years is the shortest time for a new generation resources to come online.[91]

Comments regarding the window of confidentiality on load forecast and RPS Net Short Position data persuade us to evaluate the assertion that a reduced timeframe is justified based on market changes and the amount of renewable generation added since 2006.[92] The time it takes from "contract execution" to "online generation" is an appropriate indicator to review whether projects take more than three years to come online and help us determine whether the current window of confidentiality for load forecasting and RPS Net Short Position is still reasonable.

Upon reviewing the public 2019 RPS compliance reports for utility-scale (≥ 20 Megawatt) RPS Power Purchase Agreements for the IOUs and CCAs, we find that the average time from contract execution to online generation/commercial operation date for long-term contracts was 2.9 years between 2006-2020.[93] We reviewed the CCA and IOU timelines using the same dataset for 2010-2020 and found that the average time from contract execution to online generation was still 2.9 years. However, the CCAs' RPS contracts took 2.5 years from contract execution to online generation compared to 3.1 years for

[91] D.06-06-066 at 35-43.

[92] CalCCA Reply Comments at 7.

[93] This data was aggregated for utility-scale (≥ 20 Megawatt) RPS Power Purchase Agreements for the IOUs and CCAs from the RPS Compliance Reports in August 2020.

The public 2019 RPS Compliance Reports (August 2020) are located here: ftp://ftp.cpuc.ca.gov/RPS_PPAs/Compliance%20Report%20Archives/

See Attachment 1 for details on how to replicate the data and summary tables.

the IOUs.[94] We also reviewed data for the past five years (2016-2020), and our review shows that the overall joint average for IOUs and CCAs dropped to 2.6 years. The CCAs contracted 80 percent of the RPS contracts between 2016-2020, thereby driving down the timeline from contract execution to online generation. The overall average drops even further as we use a more recent procurement dataset. For example, the average years from contract execution to online generation during 2018-2020 is 2.3 years for the CCAs. This decline in average time indicates that renewable projects are taking less than three years from contract execution to online generation. If projects are coming online within less than three years, it is reasonable to revisit the underlying assumption of holding data confidential for three or more years.

Under the currently effective confidentiality matrix, the window of confidentiality for load forecast and RNS data extends to four years, three future years, and the year of filing. This period equals or exceeds the length of future RPS compliance periods, thus making it impossible for the public to access compliance information for an entire compliance period. Since this window of confidentiality was established based on the information that it takes three years for projects to come online and now that the average time has dropped to 2.6 years (2016-2020) and even further to 2.3 years between 2018-2020, it is reasonable to reconsider setting a corresponding window of confidentiality. The Commission finds it reasonable to shorten the overall window of confidentiality for load forecast data to three years (2 future years, and the year of filing).

Arguments that RPS compliance position should not be made public before the close of a multi-year compliance period to avoid disclosing market

[94] The IOU timeline also includes the regulatory process to approve their RPS contracts, which can take six months for an advice letter filing or 12-18 months if it is an application.

position to potential sellers in the bilateral market are unconvincing and more restrictive than the current rules. We find the Staff's recommendation to reduce the window of confidentiality to the year of filing and the two years in the future reasonable because it validates our findings, as explained above. Second, it allows data confidentiality for three years, thus allowing confidentiality protection for contemporaneous project negotiations and project details. Given the fundamentally long-term nature of RPS procurement, the confidentiality of information for the future two years of load projections is adequate to avoid RPS market manipulations.

The revised RPS data confidentiality rule will allow a retail seller's forecast in 2022 (Filing Year) of its load forecast (MWh) and RNS for 2022, 2023, and 2024 to remain confidential, but the forecast for 2025 would be public. As data becomes one year old, the one-year window of confidentiality for historical data will come into play. Thus, in the 2022 forecast for 2023, 2024, 2025, the data for 2023 would be public in 2024, when it is one year old. The information for 2024 should be public in 2025, and so on.

We reviewed GPI's alternate confidentiality proposal but decline to adopt it. GPI's examples focus on the case of four-year Compliance Periods; however, Compliance Period 4 is the only remaining four-year Compliance Period. Compliance Period 5 and all future Compliance Periods are only three years long, so with this interpretation, GPI's suggestion results in only a single change from the staff proposal - allowing retail sellers to redact 2024 for the 2021 reporting year. Moreover, keeping track of the sliding schedule of confidential data will require more management.

As we move toward an era with more robust participation by CCAs, who already disclose the data indicated in TURN's comments, it is proper for all participants, including IOUs and ESPs, to be equally transparent.

In furthering the intent of D.06-06-066, we grant greater access to RPS compliance reports for two datasets: energy and capacity forecast and RPS Net Short Position. Therefore, the Commission should reduce the window of confidentiality on these datasets from four years to a total of three years, which will include the two future years and one year in the past/ the year of filing.

6. RPS Contract Price Disclosures

This Section reviews comments and replies on public disclosure of RPS contract price data.

Currently, all retail sellers may keep their procurement prices confidential for three years after the commercial operation date or until one year following the expiration of the contract, whichever comes first.[95]

6.1. Staff Proposal Summary

The Staff Proposal recommends publicly disclosing contract prices earlier than the current rules. The proposal for disclosure is as follows:

(1) Pricing of RPS contracts between an IOU and a developer submitted as a Tier 3 advice letter requiring approval via a formal Commission resolution to become publicly available in the draft resolution and the final resolution adopted by the Commission.

(2) Pricing of RPS contracts between an IOU and developer submitted by a Tier 1 or Tier 2 advice letter but do not require approval by way of Commission resolution (*e.g.*,

[95] D.06-6-066, Appendix 1 - Section VII- Bilateral Contract Terms and Conditions (Electric).

contracts under the renewable auction mechanism (RAM))[96] to become publicly available in the advice letter.

(3) Pricing of RPS contracts between an IOU and developer submitted as an application for Commission approval becomes publicly available when filing the application.

(4) Pricing of RPS contracts between an ESP or a CCA and a developer that does not require Commission approval is publicly available the six months after the contract is signed or 30 days after deliveries of energy and/or RECs under the contract commence, whichever occurs first.

6.2. Parties' Position

CalCCA supports the Staff Proposal on reducing the period of confidentiality for RPS contract pricing data. However, for RPS contracts that do not require Commission approval (category 4 above), CalCCA recommends that the contract price become publicly available one year after contract execution.[97] It states that the additional time would allow the retail seller to present a more complete and comprehensive picture of its procurement activities after the close of the solicitation and negotiations.[98]

In its replies, the CalCCA suggests that broad access to recent and more varied pricing information may reduce contract prices market-wide and thus reduce costs to ratepayers.[99] It recognizes the potential risk mentioned in the Joint IOU comments. It recommends that the Commission work with the parties in this proceeding to thoroughly and comprehensively analyze the potential

[96] The Commission initiated the RAM program in D.10-12-048.

[97] CalCCA Comments at 5.

[98] CalCCA Comments at 6.

[99] CalCCA Reply Comments at 5.

harms that could result from the earlier release of the contract pricing information.[100]

TURN, GPI, Defenders, CUE support the Staff Proposal to disclose RPS data ahead of the current window of confidentiality.

GPI recommends that RPS cost and non-cost data for CCA and ESP solicitations become publicly available on a timeline parallel to IOU solicited bid data disclosure.[101]

Both AWEA and IEP oppose the Staff Proposal; however, they propose alternate disclosure processes. AWEA recommends disclosing the contract price two years after the commercial operation date. IEP recommends disclosing contract prices only if the Commission resolution approves the contract and not disclosing the price in the draft resolution.[102]

The majority of market participants and Cal Advocates oppose the Staff Proposal to shorten the amount of time RPS contract price information could remain confidential.[103] For brevity, we summarize the opposing arguments here - the disagreeing parties contend that confidentiality revisions are unnecessary and would potentially result in market-sensitive and trade secret information disclosure during open, multi-year compliance periods. The parties argue that price disclosure is likely to allow RPS suppliers and competitors to extract higher prices from retail sellers during negotiations, thereby increasing costs for

[100] CalCCA Reply Comments at 5-6.

[101] GPI Comments at 5.

[102] IEP Comments at 5.

[103] CASMU Comments at 14-15; Joint DA Parties Comments at 7-8; Joint IOU Comments at 22; Shell Comments at 7; AWEA Comments at 2-6; WPTF Comments at 2; Cal Advocates Comments at 5; IEP Comments at 2; SEIA and LSA Comments at 4-6 and WPTF Comments at 1-2.

California customers. Parties with generation interests contend that pricing disclosures will harm project development. The comments suggest that even though price disclosure may not impact the specific contract at issue, it may impact concurrent negotiations or negotiations that occur close in time to a completed negotiation to drive the price up because no incentive will exist for sellers in subsequent transactions to go lower than the most recently agreed to price.

Cal Advocates opposes the Staff Proposal and recommends that the Commission determine – (1) whether the RPS market has matured across all RPS-eligible resources and (2) whether or not shortened confidentiality periods will increase short-term market pressures.[104]

Shell argues that disclosure of all retail sellers' aggregated RPS price data may be justified to enable the Commission to determine market trends for RPS procurement, but there is no justification for the Commission to require ESPs to reveal their RPS procurement prices publicly.[105] In reply comments on the Staff Proposal, Shell states that to the extent the Commission requires ESP's RPS data, it is already being submitted to the Energy Division as it refers to D.18-10-019, which requires all retail sellers to provide RPS contract price information on a semi-annual basis.[106]

SEIA/LSA's comments suggest that the public has access to RPS cost data via the Padilla Report. It adds that publicizing RPS data is now governed by Sections 910 and 911 enacted in 2011 SB 836 (Padilla), Stats. 2011, ch. 600), which directly addresses what and how cost information related to the RPS program

[104] Cal Advocates Comments at 5.

[105] Shell Comments at 7.

[106] Shell Reply Comments at 2.

(i.e., on an "aggregated" basis) is to be reported publicly by the Commission each year to the legislature.[107]

CESA states that a reasonable lag for public disclosure of contract prices and bid information is needed to sufficiently protect market-sensitive information and preserve competition.[108] It asserts that the Commission would overreach its requirement of the reporting and public disclosure of contract prices since it does not appear to be a request by the legislature.[109]

In its reply comments, TURN states that concerns about public disclosure are overblown and reflect the desire of private entities to withhold data rather than supporting any overarching public interest.[110] It adds that the Commission is not required to seek affirmative guidance from the legislature before modifying its confidentiality rules, and the Legislature delegates this power to the Commission.[111]

6.3. Discussion - Timing of Contract Price Disclosure

The issues before us regarding the disclosure of RPS price data are: (1) Is the current confidentiality window for RPS-eligible contract price data still needed to protect ratepayers from higher prices? And if not, (2) What is a suitable window of confidentiality?

[107] SEIA/LSA Comments at 7.

[108] CESA Comments at 3.

[109] *Id*.

[110] TURN Reply Comments at 6.

[111] TURN Reply Comments at 7.

While the public has a right to access most Commission records,[112] we must ensure that under Section 454.5(g), we adopt processes to provide proper confidentiality to any market-sensitive information in procurement plans and related submissions.

The current rules grant three years of confidentiality for an RPS contract price release after either energy deliveries start or the commercial operation date. On average, RPS contract price data is confidential for 5-10 years from contract execution.[113] Holding data confidential for an extended period contradicts our intent to grant greater public access to RPS information. If projects are coming online in less than three years, then holding price information confidential for 5-10 years does not add transparency or value to the market and retail customers alike, and it is contradictory to our guiding principles.[114]

Parties opposing the Staff Proposal assert that Staff has not demonstrated a transparency problem that needs fixing, it is premature, and there is not sufficient evidence in the record that the RPS market has matured. Whereas the Staff Proposal and parties in favor of disclosing the information state that the market situation is now quite different from when the procurement confidentiality rules were developed.

---

[112] *See* D.06-06-066 at 59-60; *See* D.17-09-023, *Phase 2A Decision Adopting General Order 66-D and Administrative Processes for Submission and Release of Potentially Confidential Information*, at 2-3, 9-12.

[113] Using the RPS Compliance Report we find that a project with contract execution date of March 30, 2012 and online generation date of January 1, 2019 may disclose its price data on December 31, 2021.

[114] *See* Guiding Principles stated in the February 27, 2020 ACR, Section B of the Staff Proposal at 1-2.

We find it reasonable to revise the rules in light of the market development for RPS-eligible resources, which is now nearly two decades old.[115] The Staff Proposal notes that "the RPS market itself has undergone major transformation since the RPS program began in 2002…."[116] As indicated in the Staff Report, one "critical element" that has changed is that "RPS-eligible resources available to retail sellers have increased substantially."[117] Additionally, we find that RPS prices reached a historic low of $28/MWh in 2019 for RPS eligible energy contracts across all technology types and have dropped an average of 13 percent per year between 2007 and 2019.[118] The overall contracted commitment in renewables by retail sellers in California has increased over time, contributing to the cost competitiveness of technologies, particularly solar and wind.[119] Similarly, CUE asserts that companies are creating an abundance of viable generating projects, and as a result, we can have more transparency without sacrificing the market's competitiveness.[120]

To demonstrate the major transformation of the RPS market since the existing confidentiality rules were established in D.06-06-066, the Preliminary Staff Proposal noted that in RPS solicitations in 2006, the three large IOUs

---

[115] *See* February 27, 2020 ACR, Staff Proposal at 2.

[116] *Id.*

[117] *See* February 27, 2020 ACR, Staff Proposal at 3.

[118] *See* 2020 California Renewables Portfolio Standard Annual Report at 6.

[119] *See* 2020 California Renewables Portfolio Standard Annual Report at 22.

[120] CUE Comments at 2; Also see California Independent System Operator (CAISO) Briefing dated July 15, 2021, noting a large amount of renewable capacity in the CAISO interconnection queue -- 97,643 MWs, of which 53,339 MWs is Cluster 14 applications filed in 2021 -- which indicates viable generators and projects are ready to sell RPS-eligible electricity to California LSEs (at http://www.caiso.com/Documents/Briefing-Renewables-Generator-Interconnection-Queue-Presentation-July-2021.pdf, at 4).

received fewer than 90 bids,[121] while in 2011, their RPS solicitations elicited over 1,000 unique bids from over 260 sellers representing 91,000 megawatts (MWs) of proposed RPS-eligible resources.[122]

Further, the CAISO interconnection queue contains a very large number of RPS-eligible projects that are seeking to interconnect to the grid, reflecting 97,643 MWs of proposed new renewable generation.[123] For purposes of comparison, the 2021 peak load forecast for the CAISO grid (which already includes substantial renewable generation) was 45,837 MWs.[124] The depth of the CAISO interconnection queue indicates significant commercial interest from generators and projects seeking to sell RPS-eligible electricity to California LSEs and that robust competition for contracts will continue in the future.

Improving an existing process or reevaluating reporting requirements should not merely be based on a need to fix a broken system. We find that Staff's Proposal gives foundational reasons to revisit the timeline to allow public access to RPS data.[125] With an expanded role of RPS eligible- energy in California's energy market, overall market evolution, and lower procurement prices resulting from a competitive solicitation, it is reasonable to revisit the protection needed to balance market participants, the ratepayers, and the public's needs.

---

[121] Administrative Law Judge Ruling Requesting Comments on Preliminary Staff Proposal, issued July 1, 2013 in R.11-05-055 ("Preliminary Staff Proposal"), at p.9-10.

[122] Preliminary Staff Proposal, at p.20, fn.31; Renewables Portfolio Standard Quarterly Report, 4th Quarter 2011, February 3, 2012, at p.7, available at: 2011-2012 Reports to the Legislature (ca.gov).

[123] CAISO Briefing, July 7, 2021, available at http://www.caiso.com/Documents/Briefing-Renewables-Generator-Interconnection-Queue-Presentation-July-2021.pdf, at 4). Of this amount, 53,339 MWs are from applications filed in the 2021 "Cluster 14" interconnection queue.

[124] *See*: http://www.caiso.com/Documents/2021-Summer-Loads-and-Resources-Assessment.pdf, p.5.

[125] Staff Proposal at 2-3.

In D.06-06-066, we stated that information must be material to be deemed "market sensitive" in the context of Section 454.5(g), and information is material if it affects the market price an energy buyer pays for electricity.[126] The Decision further stated: "Information that does not allow market participants to raise the price of electricity the IOUs procure from them is not, therefore, market sensitive information."[127] CalCCA asserts that broad access to recent and more varied pricing information from all retail sellers may reduce market prices and thus reduce costs to ratepayers.

As noted above, in D.06-06-066, the Commission found that Section 454(g) only protects information that would result in higher prices for RPS-eligible electricity.[128] It does not protect a developer's interest in obtaining the best possible price or out-bidding competitors. The Commission found that, at that time, prompt disclosure of contract prices "will result in higher, not lower, prices for ratepayers in most situations."[129] However, in light of the changes in the RPS market since 2006 that are described above, this finding is no longer supported by the facts. Rather, we conclude that prompt disclosure of RPS-eligible contract prices will not result in higher contract prices, but will either have no impact or may result in lower contract prices (because developers will know the price they have to beat). Due to the extensive competition in the market, developers will continue to have strong incentives to offer the lowest possible price.

The Staff Proposal indicated that IOU contract prices should be public when approved in a resolution, if applicable, or when the IOU submits its

[126] D.06-06-066 at p.42.

[127] *Id.*

[128] *Id.*, Finding of Fact 6.

[129] *Id.*, Finding of Fact 2.

request for Commission approval. For CCA and ESP contracts, the staff proposed that prices become public six months after contract execution or 30 days after deliveries of energy or RECs begin, whichever occurs first. IEP recommends disclosing RPS data only after the Commission's approval. CalCCA recommends that the Commission release data after a year from contract execution to allow solicitations and negotiations to conclude, and AWEA recommends disclosing RPS contract prices two years after the commercial operation date. We agree that the Staff Proposal for price disclosure "is both feasible and desirable"[130] with some modifications.

We determine that making RPS prices public six months after Commission approval of contracts, where such approval is required, and six months after contract execution in other situations, will avoid market manipulation, protect ratepayers from higher costs, and could result in lower costs to ratepayers. We believe this strikes the appropriate balance in applying Section 454(g)'s concern for protecting market sensitive information, while recognizing (as found in D.06-06-066) "[w]e are a public agency that regulates utilities, and most of our business must be conducted in the open."[131] As discussed above, the Commission has a strong policy that favors maximizing transparency wherever possible.

Modifying the Staff Proposal to delay disclosure until six months after contract approval eliminates the potential for disclosing the price of a contract that ultimately is not approved, and also prevents potential impacts on bids that may be submitted in solicitations that are open contemporaneously with the

[130] Staff Proposal, at p.11-12.

[131] D.06-06-066, Conclusion of Law 10.

Commission's approval of a new contract. Given the six-month delay in price disclosure, the bid deadline in a solicitation pending at the time a contract is approved, or is executed, will likely have passed when the price of that contract is disclosed. In any event, disclosure of contract prices six months after Commission approval will not result in higher bids in pending solicitations because of the overriding impact of competition from a large number of bidders seeking contracts (as explained above). Moreover, contract prices disclosed six months after approval or execution will be substantially more than six months out-of-date, due to the significant time that generally elapses between the submittal of bids and the time when contracts are executed or approved. For example, RPS program rules allow 12 months following submittal of the shortlist to the Commission for execution of contracts.[132]

We also find it is not reasonable to expect, as asserted in comments on the Staff Proposal, reduced developer participation in California LSE solicitations due to the new contract price disclosure rules because those developers would forego very significant business opportunities.

We note that generally IOU contracts require Commission approval and will be subject to price disclosure after approval is granted, whereas ESP and CCA contracts do not require Commission approval and will be subject to price disclosure after execution. This difference is reasonable due to the difference in the Commission's statutory authority over the various types of LSEs with regard to rate regulation. This minor difference in timing of disclosure is consistent with the determination in D.06-06-066 that differences between parties may

[132] D.12-11-016, p.35 and Ordering Paragraph 9.

justify different treatment of data.[133] Moreover, since the same rule applies to all LSEs for contracts approved by the Commission and contracts not subject to approval by the Commission, it is consistent with the requirement in Pub. Util. Code § 399.12(j)(3) to apply the same terms and conditions to ESPs and electrical corporations.

We disagree with ESPs' comments that we cannot require price data from them. By requiring them to make their data public, we are not regulating their rates. The duties imposed on the Commission are separate and apart from CCAs' or ESPs' ability to set their retail rates. Section 399.12(j)(3) requires that ESPs "shall be subject to the same terms and conditions applicable to an electrical corporation . . ."

We disagree with parties that suggest that the Commission has information per D.18-10-019 and the Padilla Report, and therefore, there is no need to disclose pricing data. The RPS information submitted to Energy Division per D.18-10-019 is used to calculate the Power Charge Indifference Adjustment rate. The Padilla Report summarizes the RPS program's procurement expenditure and contracts cost data for the legislature. The purpose of disclosing RPS prices to the public is not akin to ratepayer advocates, the legislature, or other nonmarket participants reviewing cost issues in a filing before the Commission, such as pursuant to D.18-10-019 or the RPS proceeding. In addition to general accessibility of RPS data for planners and regulators, making RPS contract data accessible for public consumption is relevant for transparency, increasing market competitiveness, consumer education, market research and

[133] D.06-06-066, Conclusions of Law 15 and 23, and pp.54-55.

development, and evaluating our policies and program's efficacy by a wider audience at the state and national level.

We disagree with CESA's comments that the Commission requires guidance from the legislature to enact revised confidentiality rules. We agree with TURN that the Commission is not required to seek affirmative guidance from the legislature before modifying its confidentiality rules, and the legislature delegates this power to the Commission. The California Constitution confers us with broad authority to regulate utilities and establish rules and procedures.[134]

Therefore, we adopt the following revisions: For contracts that require Commission approval, the contract price is public six months after the Commission approves a contract, if Commission approval is required. For contracts that do not require Commission approval, the contract price is public six months after the contract execution date. These disclosure times are applicable even if a contract is for only bundled or unbundled RECs from either a new or existing facility.

7. RPS Procurement – Bid and Contract Information for Procurement Planning or Transmission

This section will review the comments and replies on disclosing RPS contract information, and individual and aggregated bid information, listed under Sections E.3 and F of the Staff Proposal. We will also address Supplemental Energy Payments (SEP) rules, as they are no longer applicable.

Under the current rules, contract summaries, information on counterparty, resource type, location, capacity, expected deliveries, delivery point, length of the contract, and online date become public after contract execution for all retail sellers. The "other contract terms" are public three years after the commercial

[134] Cal. Const., art. XII, §§ 2, 4, 6.

operation date (energy deliveries including deliveries from projects with REC contracts) or until one year following expiration, whichever comes first.[135] [136] Depending on the type of filing, the Staff Proposal recommends public disclosure sooner than the current timelines. The Staff Proposal is also recommending public disclosure of competitive bid solicitation information in IOU solicitations after the Commission approves the shortlist (for bids that are not shortlisted) or after the shortlist expires (for bids that are on the shortlist). The current rules apply to all procurement types and allow some level of data aggregation.[137]

Regarding utility-owned renewable generation (UOG) projects, the Staff Proposal seeks public disclosure of information similar to bi-lateral RPS procurement contracts. The confidentiality matrix does not identify UOG as a separate category. However, in the past, advice letters and application filings have requested data confidentiality for the utility-owned renewable project under the confidentiality rules for electric procurement.[138]

7.1. Staff Proposal Summary

The Staff Proposal highlights the need for RPS contract information for RPS procurement planning in context to the formal annual RPS procurement plans required by § 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 the new transmission. Thus, Staff contends that it is reasonable to

[135] *See* D.06-06-066, Appendix 1, Section VII. G.

[136] *See* D.06-06-066, Appendix 2, Section I C.

[137] *See* D.06-06-066, Appendix 1, Section VIII A and B.

[138] *See* Application 21-04-006, Liberty Utilities Motion for Leave to File Confidential Material Under Seal.

develop an information regime that maximizes the public availability of RPS data for planning purposes.

For ease of review and disposition, we have summarized the Staff recommendations on disclosing RPS contract information under the following categories:

7.1.1. Disclosing individual bid and contract information

- Competitive Bid Solicitation Information - Shortlisted and non-shortlisted bids that do not result in contract execution;[139]
- RPS contract information (non-price) on individual projects (UOG or Bi-lateral contracts) filed as part of an advice letter or an application for Commission approval;[140]
- Non- contract terms, such as evaluation criteria of individual contracts and bids;[141]

[139] *See* February 27, 2020, ACR, Staff Proposal Sections F.1 and F.2, at 15-16.The following data is proposed to become public - 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; contract term length; expected annual energy offered; expected annual RECs offered in REC-only contracts; and delivery point.

[140] *See* February 27, 2020, ACR, Staff Proposal Sections F.4, F.5 and F.7 at 18- 20 and F.11 at 23. Forecasts of RPS-eligible energy (megawatt-hours (MWh)), capacity (megawatt (MW)), and RECs; facility location; generation technology; emissions of air and water pollutants, by pollutant, for each approved contract or UOG authorization is public.

[141] *See* February 27, 2020, ACR, Staff Proposal Section E.3 at 12-13. Information includes, 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 RECs commences, or three years after the Commission approves the contract, whichever comes first.

- ESP and CCA RPS contract is public 30 days after commercial operation date (energy deliveries) begin under the contract;[142]
- RPS generation forecast assumptions to calculate the IOU's project viability and failure assessment assumptions. [143]

7.1.2. Disclosing Aggregated Bid Information

- Disclosing bid prices of all bids received in response to each IOU's RPS solicitation when aggregated by resource category, 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. [144]
- The RPS generation forecast for RPS procurement offers that have been shortlisted 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 the resource category. [145]

7.1.3. Future Amendments to an Existing Contract[146]

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 the information

[142] *See* February 27, 2020, ACR, Staff Proposal Section F.8 at 21.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.

[143] *See* February 27, 2020, ACR, Staff Proposal Section F.6 at 19.

[144] *See* February 27, 2020, ACR, Staff Proposal, Section F.3 at 17.

[145] *See* February 27, 2020, ACR, Staff Proposal Section F.5 at 18- 19.

[146] *See* February 27, 2020, ACR, Staff Proposal Section F. 11 at 22-23.

public.

7.2. Parties' Positions

GPI, TURN, and Defenders support increased disclosure of confidential RPS contract information. GPI recommends that the Staff Proposal include parallel transparency requirements for CCA and ESP RPS bids as the IOUs, following the negotiations/contract finalization.[147] TURN supports the Staff Proposal's required disclosure of key details for each procurement transaction executed by a CCA or ESP.[148] Both GPI and TURN recommend disclosing ESP's and CCA's non-cost values such as resource type, location, and capacity six months after the contract is signed, or 30 days after deliveries (energy deliveries including deliveries from projects with REC contracts) begin under the contract, whichever occurs first.[149]

TURN makes two other recommendations. First, it suggests that the Commission establish affirmative filing requirements for ESPs and CCAs to provide this publicly available information once the confidentiality protections expire.[150] Second, it recommends that CCAs and ESPs report actual procurement under contracts that permit resource substitution of RPS generation facilities so that the procurements can be reconciled with the scope of the original contract and tracked to the actual RPS facility.[151]

Defenders recommend that retail sellers disclose score sheets, analyses, evaluations of proposed RPS projects, and generation facility locations when RPS

[147] GPI Comments at 3-6.

[148] TURN Comments at 1.

[149] GPI Comments at 4-5 and TURN at 1-2.

[150] TURN Comments at 3.

[151] TURN Comments at 4-5.

procurement contract applications are submitted for the Commission's approval.[152] It further contends that retail sellers should provide a more detailed description of generation facilities, and ESP and CCA RPS procurement contract terms become publicly available the day after their decision-making body approves their shortlists.[153]

CalCCA contends that CCAs currently submit all of their RPS contracts to Energy Division staff as part of their respective annual RPS Compliance Report filings. It seeks clarity on Energy Division's procedure to make just the items listed in the Staff Proposal public while ensuring the confidentiality of other terms not listed in the proposal if requested after the 30 days have elapsed.[154] CalCCA disagrees with TURN's comments on releasing information within six months of contract execution. It states that pricing information and the contract provisions should be publicly available one year after contract execution, or the length of confidentiality protection that the Commission ultimately adopts.[155] Objecting to TURN's comments requiring ESPs and CCAs to affirmatively file and serve contract information on the date that the confidentiality protection expires, CalCCA states that it is administratively burdensome and would expose the CCAs and the ESPs to potential non-compliance due to the repeated filing requirements.[156]

The Joint IOUs, CASMU, Joint DA Parties, Shell, AWEA, IEP, WPTF, and Cal Advocates object to releasing RPS procurement contract information

[152] Defenders at 3-4.

[153] Defenders Comments at 4-5.

[154] CalCCA Comments at 7.

[155] CalCCA Reply Comments at 8.

[156] CalCCA Replies at 9.

proposed in the Staff Proposal. The Joint IOUs, [157] Joint DA Parties, [158] Shell,[159] CASMU[160]state that contract project evaluation/status and contract terms are market-sensitive, trade secret information.

The Joint IOUs oppose the Staff Proposal's recommendation to publicly disclose the shortlist of the RPS bids and the aggregate average of all bid prices related to the IOU shortlist for that solicitation. They also object to disclosing project evaluation status, stating that it could hamper developers' ability to negotiate necessary contracts and/or invite interference with project development by competitors. Developers may choose to sell the output from their projects outside of California.[161]

Several parties, including the AWEA and the Joint DA Parties, argue that lifting the confidentiality treatment of these ESP contracts interferes with the sanctity of contracts. In particular, the Joint DA parties contend that the proposal would alter existing wholesale supply contracts by requiring disclosures of prices and other terms.[162] They also argue that the proposal effectively imposes new terms on freely negotiated wholesale supply contracts by forcing the parties to disclose information that they negotiated to keep confidential.[163] They argue that this implicates the *Mobile-Sierra* Doctrine.[164] The Joint DA parties further

---

[157] Joint IOU Comments at 18, and 23-25.

[158] Joint DA Parties Comments at 7.

[159] Shell Comments at 3.

[160] CASMU Comments at 5.

[161] Joint IOU Comments at 14-15 and 23-25.

[162] Joint DA Parties Comments at 17.

[163] Joint DA Parties Comments at 18.

[164] *Mobile-Sierra* is a legal doctrine in which presumes that rates, terms and conditions of wholesale energy contracts are just and reasonable under the Federal Power act. This

Footnote continued on next page.

argue that the terms of these contracts are too complicated and specialized that there is "nothing to be gained from trying to collect and disclose prices from a particular" contract to compare against others.[165]

AWEA[166] and Joint DA Parties[167] state that to the extent the Commission does require additional disclosure, contract information should first be aggregated to protect retail sellers and their customers.

IEP contends that disclosing non-price contract terms could undermine a project developer's competitive advantage.[168] IEP states that it is unsure how to aggregate location and bid data in response to IOU solicitations. Regarding an IOU's shortlisted offers or offers subject to bilateral negotiations, IEP recommends that information be made public, in an aggregated form, only if at least three bidders are in the resource category.[169] IEP contends that releasing bids that were rejected or terminated due to distribution or network upgrade costs can result in a competitive disadvantage for the projects subject to disclosure.[170]

---

presumption can only be overcome, and contracts can only be modified, if FERC finds that terms harm public interest. *Morgan Stanley Capital Grp. V. Pub. Util District No. 1 of Snohomish Cty.*, 554 U.S. 527 (2008). In practice, it is used to prevent state actors and other parties to wholesale energy contracts from altering the rates and other key terms of those prices.

[165] Joint DA Parties Comments at 15.

[166] AWEA Comments at 4 and 6-7.

[167] Joint DA Parties at 17-18.

[168] IEP Comments at 6-7.

[169] IEP Comments at 7-8.

[170] IEP Comments at 8.

7.3. Discussion – Shortening the Window of Confidentiality for RPS Contract Terms and Granting Public Access to Competitive Bid Information

The Energy Division proposal was attached to an ALJ ruling dated February 27, 2020. We adopt some aspects of the Energy Division proposal to reform and clarify the RPS procurement data confidentiality rules. The rules adopted today will apply to all RPS-eligible contracts through power purchase agreements (PPAs), sales agreements, REC-only agreements, and UOGs. These rules shall apply to RPS-eligible contracts and/or RPS-eligible bids regardless of whether they result from an RPS solicitation, an all-source solicitation, or a solicitation ordered in a different proceeding. Specifically, we adopt the following:

1. Aggregated bid information for shortlisted bids and bids that do not reach the shortlisting stage in an IOU solicitation will be public after the final contract is submitted for Commission approval, as long as at least three bidders are in the resource category.
2. Executed contracts approved by the Commission will be public six months after the Commission approval date.
3. Executed contracts that do not require Commission approval will be public six months after the contract execution date.
4. Individual bid information for shortlisted bids and bids that did not reach the shortlisting stage in an IOU solicitation shall be kept confidential for one year after the final contracts are submitted to the Commission for approval (or one year after the solicitation is closed if no contracts are executed).
5. Evaluation guidelines should be public. Other information, such as score sheets, analyses, and evaluations in an IOU solicitation, will be confidential for one year after the final contracts are submitted to the

Commission for approval (or one year after the solicitation is closed if no contracts are executed).

6. Amending a contract shall not modify the confidentiality requirements that apply to prior versions of the contract, including the time frame for making information public. For example, if an agreement is amended, the terms are public 30-days after the new contract or amendment execution date during the contract term.
7. Supplemental Energy Payments (SEP) (confidentiality matrix, Section VII F, Appendix 1) – is not relevant to the current rules. Therefore, we revise the confidentiality matrix and remove references to SEP.

The Staff Proposal furthers the Commission's goals to grant greater public access to RPS data. Under Section 454.5(g), the Commission must adopt appropriate procedures to ensure the confidentiality of any market-sensitive information related to procurement plans. We agree with comments that recommend protecting some contract information from early release to the market. After reviewing the comments and replies, we adopt aspects of the Staff Proposal that will further transparency while protecting individual contract information, allows data aggregation, and protects the IOUs' critical evaluation and selection criteria from early release.

The confidentiality matrix (Section VIII - Competitive Bid Solicitation Information) allows public access to aggregated competitive bid solicitation information for "all procurement types" after final contracts are submitted to CPUC for approval. The rules, however, do not identify RPS-eligible competitive bid solicitations as a separate category. It is reasonable to add a subsection in the current matrix that will allow greater public access to RPS-eligible competitive bid solicitations, as intended by D.06-06-066. Regarding the Staff Proposal on disclosing certain information about each bids received in response to an IOU's solicitation, we agree with parties about considering data aggregation as a tool

for transparency and granting public access to RPS data. Firstly, data aggregation lessens the possibility of releasing market-sensitive information because it prevents disclosing individual bid/project and market-sensitive information, which bidders could use to seek higher bid prices or favorable contract terms to the detriment of ratepayers. If the information does not allow market participants to raise the price of electricity a retail seller procures, then that information is not market sensitive. Second, allowing access after the final contracts are submitted for CPUC approval protects market-sensitive information and prevents negative ratepayer impact because negotiations have concluded.

We find merit in the argument that, even when aggregated, individual project information may still be discoverable if fewer than three projects participate in the resource category.[171] Therefore, aggregated RPS-eligible bid information is granted public access if three or more bids are in the resource category. Some data points cannot be aggregated, such as WECC IDs. However, all other contract information data points listed in Section F.1, F.2, and F.3 of the Staff Proposal can be aggregated for public disclosure. We disagree with comments suggesting that project location aggregation is not feasible. Project locations can be aggregated into regional zones, thus alleviating any concerns of data aggregation.

The Commission should add a new subsection to the confidentiality matrix (Section VIII C) to allow aggregated RPS-eligible bid prices and aggregated RPS-eligible bid information from IOU competitive solicitations public access after the final contract is submitted to CPUC for approval. Allowing public access to the

[171] AWEA at 6 and IEP at 7.

aggregated information after the final contract is submitted for CPUC approval addresses any concerns regarding bidders on the shortlist using the aggregated bid price information during negotiations to seek higher prices than they initially proposed in their offer.

Regarding disclosing individual contracts and bid information, the current rules allow public disclosure of contract summaries and other contract terms, but there are no provisions to disclose an individual bidder's bid information. The Staff Proposal recommends expanding public access to both these categories. Parties disagreeing with staff recommendations state that insufficient protections for market-sensitive information will deter future participation in RPS or all source solicitations.[172] Under Section 454.5(g), the Commission has the discretion to protect market-sensitive information and grant adequate protection and public access. We note that a timely release of individual bid information will have a minimal negative impact on the project's viability, contemporaneous negotiations, and procurement prices. We also do not believe that rules that require disclosure of bid prices and other terms will deter developers' from participating in solicitations because those developers would forego significant business opportunities.

We find merit in CalCCA's recommendation to align the confidentiality requirements for RPS-eligible contract pricing and other contract terms. In D.06-06-066, we did not distinguish between cost and non-cost data, and we continue to adopt that principle here. As explained earlier in this decision, releasing price data six months after the Commission approval, or six months after contract execution when Commission approval is not required, is

[172] AReM Comments at 10 and Joint IOUs at 24.

reasonable. Accordingly, the Commission should align disclosure of contract terms for executed contracts with disclosure of the contract price information. The contract should become public six months after the Commission approval date, or six months after contract execution if Commission approval is not required. Accordingly, the Commission should revise Section VII.F (Appendix 1) and Section I. C (Appendix 2) of the confidentiality matrix to incorporate the updated RPS data confidentiality rules.

Regarding individual bids (non-winning bids or shortlisted bids and those that do not reach the shortlisting stage), the Staff Proposal recommends that certain bid information, and aggregated bid prices, be disclosed when the shortlist is approved (for bids not shortlisted) or when the shortlist expires (for bids that are shortlisted) and recommends that other individual bid information should kept confidential for three years after the close of the solicitation to which the bids responded.[173] We find that Staff's recommendations should be modified to require disclosure of all individual bid information (including prices) one year after the final contracts are submitted for Commission approval. We find that disclosure of this information immediately after a solicitation ends could cause a seller to submit a higher price bid in a subsequent solicitation, to match any higher prices submitted by competitors in the earlier solicitation. However, after one year has passed, this is not likely to occur, because the bid prices will be out-of-date and the pool of projects competing for contracts will have changed. Moreover, the extensive competition for contracts will serve as strong motivation for bidders to offer the lowest possible price. Accordingly, disclosure at this time will not result in the potential for higher prices for RPS-eligible resources. We

[173] *See* February 27, 2020, ACR, Staff Proposal Sections F.1, F.2 and F.3 at 15-17.

also find no reason to delay releasing any bid information for three years because, by that time, the information will have little or no relevance. The Commission should revise the confidentiality matrix and add a new subsection VIII. C. to include these provisions on granting public access to individual bid information.

The Joint IOUs recommend that the Commission remain consistent with the current approach in the D.06-06-066 matrix regarding confidentiality of evaluation and scoring, which provides for disclosure three years after the winning bids are selected. [174] The Staff Proposal recommends disclosing non-contract terms, such as score sheets, analyses, rate impact, project costs, evaluations of proposed RPS projects when an application is submitted for Commission approval. IEP states that the Staff Proposal seems to recognize that the "specific quantitative analysis" can include market-sensitive information that should not be made public for a reasonable period after the Commission approves the contract. We find that a middle ground is appropriate and, as with individual bid information, bid evaluation and scoring should be disclosed one year after the final contracts are submitted for Commission approval, or one year after the solicitation is closed if no contracts are executed. The Commission should modify the confidentiality matrix (Section VII and Section VIII) to specifically include these provisions for RPS procurement evaluation and scoring criteria and evaluation of individual bids.

Since utilities have filed UOG applications seeking confidentiality status under D.06-06-066, we agree with the Staff's recommendation that public disclosure of information about proposed UOG projects should be similar to that

[174] *See* confidentiality matrix, Section VIII. B – Competitive Bid Solicitation Information.

of third-party projects with which an IOU may contract for RPS procurement. The rules adopted today apply to UOG projects. .

We disagree with comments from ESPs that lifting the confidentiality treatment of these ESP contracts interferes with the sanctity of contracts. The new Commission requirements will apply to new contracts, so parties can either conform to the terms or agree to different terms with the knowledge of the conflict and the overriding obligation to comply with Commission rules.

Nevertheless, ESPs conflate altering the prices or terms/conditions of a previously negotiated energy contract with disclosure of some details of these contracts after the fact. The proposed disclosures do not alter their contracts' prices or other terms and conditions and do not implicate the Mobile-Sierra doctrine. California has a progressive climate agenda, and the businesses wishing to participate in the state's renewable market are aware of our expectations of them. If the contracts did not anticipate future changes to confidentiality rules of some contract terms by the Commission, the California Legislature, or any other state entity, it is not justified to block the proposed changes. It would be impossible for every private contract to anticipate any legislative or regulatory change in the life of the multi-year or even decades-long agreement. The parties' argument would prevent the Commission or any other state regulatory entity from ever adopting a regulation or law that could in any way alter the anticipated contract terms. That result gives the private parties too much power and unreasonably limits the state's authority to regulate its affairs.

We deny TURN's request to set an affirmative requirement to release public information. Currently, a retail seller does not have an affirmative obligation to immediately provide information to the CPUC when it loses its confidential protection. Retail sellers submit data at the Commission at various

times, such as the RPS procurement plans and annual RPS compliance reports, and the data will become public in due course of time per this decision. Therefore, the CPUC sees no reason to change this process. Once the confidentiality window ends, the public has the right to request access to contract information just as they do now.

Regarding CalCCA's request to clarify the process of releasing non-confidential information and protecting data that is still confidential even after the confidentiality period ends, the Commission finds that the current process followed by Energy Division is appropriate. RPS contracts are frequently the subject of a request under the Public Records Act, and when Energy Division releases this information, it considers the confidentiality of contract information before releasing the data. Therefore, Energy Division shall continue to implement the process.

If a contract is amended, this shall not modify the confidentiality requirements that apply to prior versions of the contract, including the time frame for public information. The terms will be public 30 days after the new contract execution date during the contract term.

Today's decision clarifies that SEP rules do not apply to the RPS procurement data. SEPs were payments administered by the California Energy Commission (CEC) intended to cover some or all (at CEC's discretion) of the difference between the market price referent (MPR) and the higher price of approved RPS contracts. The MPR was an RPS cost containment mechanism adopted in 2004 and utilized until 2011, at which point S.B. 2 (1X) (Simitian, 2011) rescinded the MPR mechanism.

8. Effective Date and Transition Provisions

In this section, we will decide when and how the new confidentiality rules will become effective.

8.1. Staff Proposal

Staff proposes two potential implementation timelines: under the first timeline, new rules will apply immediately upon adoption by the Commission; the second timeline phases in six months after Commission adoption of the decision.

8.2. Parties' Position

Not many parties commented on this section of the Staff Proposal. However, AWEA and Shell oppose the retroactive application of the new confidentiality rules. Shell states that the agreed-upon balance of risks and benefits between the parties is based on the law and the regulations at the time of the agreement, and these rules or laws must apply prospectively only.[175]

8.3. Discussion and Analyses

We have reviewed the comments and replies and agree that these rules should apply to future contracts. However, RPS contracts that have expired can be made public. Contracts approved before the effective date of this decision can maintain confidentiality under the former rules.

The revised confidentiality rules and matrix should become applicable upon the effective date of the Commission decision. The revised confidentiality rules will apply to all RPS-eligible procurement contracts executed after the effective date of the Commission decision. In addition, RPS compliance reports and any compliance documents submitted to the Commission starting January 1, 2022, will follow the revised confidentiality rules. The decision also applies to

[175] Shell Comments at 9-11.

RPS-eligible procurement contracts that expired before the effective date of the decision.

We have stated earlier that information that is public anywhere shall be public everywhere.[176] Therefore, any RPS data that was public before the effective date of this decision will still be considered public.

9. Conclusion

Reevaluating the rules on RPS data confidentiality is reasonable. The confidentiality matrix adopted in D.06-06-066 is modified as follows: greater access to two energy datasets – energy (Megawatt-Hours) and capacity (Megawatt) forecast and RPS Net Short Position (Megawatt-Hours) as we shorten the window of confidentiality from four years to three years. Energy, capacity, and RPS Net Short Position data forecast for the two future years and the year of filing will be confidential instead of the three future years and the year of filing.

The window of confidentiality for individual contract data for all retail sellers is shortened to allow public access to an RPS-eligible resource contract six months after the Commission approves the contract, or six months after execution of the contract if Commission approval is not required.

We authorize the release of aggregated data for RPS-eligible shortlisted bids and bids that do not reach the shortlisting stage in investor-owned utilities' solicitations. The aggregated bid data will be publicly accessible after the final contracts are submitted for CPUC approval when at least three bidders are in the resource category. Individual bid information for shortlisted bids and bids that did not reach the shortlisting stage may be kept confidential for one year after

[176] *See* D.06-06-066 at 73.

final contracts are submitted to the Commission for approval (or one year after the solicitation is closed if no contracts are executed).

We clarify the rules for disclosing the quantitative analysis involved in the scoring and evaluation of RPS-eligible bids. Evaluation guidelines shall be public. Other scoring and evaluation information will be confidential for one year after final contracts are submitted to the Commission for approval (or one year after the solicitation is closed if no contracts are executed).

Contract amendments cannot revise prior confidentiality terms, and the public can access the RPS data 30 days after the new contract execution date.

The revised confidentiality matrix (Attachment 2) adopted in this decision explains RPS data confidentiality provisions, as it applies to the retail sellers. For all RPS data, to the extent that they differ, the provisions of the revised confidentiality matrix supersede the provisions of D.06-06-066. Except as set forth in the revised confidentiality matrix, the provisions of D.06-06-066 continue to apply.

10. Comments on Proposed Decision

The alternate proposed decision of Commissioner Rechtschaffen 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 Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

11. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner, and Manisha Lakhanpal and Carolyn Sisto are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. On February 27, 2020, the CPUC issued an ACR to further its long-standing view that due to the substantial public interest in the RPS program, we should enable greater public access and transparency to RPS data than other data.

2. The public has a constitutional right to access most government information.

3. The Commission favors open and transparent proceedings.

4. When the Commission chooses to permit information to be filed under seal or otherwise treated as confidential, it routinely limits the duration of the confidentiality period.

5. The CPRA favors disclosure, and its exemptions to protect trade secrets must be narrowly construed.

6. Joint DA parties offer no evidence to support their claim that granting greater public access to RPS data discriminates against out-of-state ESPs or violates the interstate commerce clause.

7. Section 454.5(g) covers the confidentiality of procurement plans and related contracts information and does not designate a period of confidentiality.

8. For RPS data, the Staff Proposal does not recommend changes to the integrity of the confidential information or its status but urges a regulatory change to modify the window of confidentiality to allow greater public access as intended in D.06-06-066.

9. The Staff Proposal on setting a standard process for RPS compliance reporting by all retail sellers is consistent with rules adopted in D.06-06-066.

10. CCAs typically do not redact load forecasts or estimates of near-term net short positions.

11. In adopting RPS net short and forecast data confidentiality for three years in the future, the Commission relied on information that three years is the shortest time for new generation to come online.

12. The average time from contract execution to online generation for long-term renewable projects for IOUs and CCAs (utility-scale and ≥ 20 Megawatt) was 2.9 years from 2006-2020. The average has dropped to 2.6 years between 2016-2020 and 2.3 years between 2018-2020.

13. The RPS procurement market is nearly two decades old and has an expanded role in California's clean energy market.

14. More market participants are offering viable projects, and RPS prices dropped an average of 13 percent per year between 2007 and 2019.

15. Immediate release of RPS contract data may not provide adequate protection of market-sensitive information.

16. Aggregated data allows public access to information without disclosing individual bid information or adversely impacting market competition.

17. Granting public access to RPS contract data does not alter a retail seller's contract prices or other terms and conditions.

18. CEC stopped administering SEP for RPS contracts in 2011.

19. The agreed-upon balance of risks and benefits between the parties is based on the law and the regulations at the time of the agreement.

20. In RPS solicitations in 2006, the three large IOUs received fewer than 90 bids, while in 2011, their RPS solicitations elicited over 1,000 unique bids from over 260 sellers representing 91,000 MWs of proposed RPS-eligible resources.

21. The CAISO interconnection queue contains 97,643 MWs of proposed new renewable generation, compared to the 2021 peak load forecast of 45,837 MWs for the CAISO grid (which already includes substantial renewable generation),

which indicates extensive commercial interest from generators and projects seeking to sell-RPS eligible electricity.

22. Prompt disclosure of RPS-eligible contract and bid prices will not result in higher contract prices, but will either have no impact or may result in lower contract prices.

23. Due to the extensive competition in the RPS market, developers will continue to have strong incentives to offer the lowest possible price.

Conclusions of Law

1. The Cal. Const., Article 1, Sections 3(b)(1) and (2) favor disclosure of government records.

2. Gov. Code § 6255(a) provides that state agencies that wish to withhold public records from the public must base such withholding on express provisions of the CPRA or upon a demonstration that on the facts of the particular case, the public interest served by withholding the records outweighs the public interest served by disclosure.

3. The Commission has a strong policy that favors maximizing transparency wherever possible.

4. The fact that a record may fall within a CPRA exemption does not preclude its disclosure.

5. CPRA exemptions are permissive rather than mandatory; they allow nondisclosure but do not prohibit disclosure.

6. Gov. Code § 6253.3 provides that the Commission cannot delegate to regulated entities, or others, the responsibility for making disclosure determinations.

7. Gov. Code § 6260 provides that CPRA exemptions cannot be asserted as a basis for withholding information in response to discovery.

8. Gov. Code § 6254 does not stop an agency from disclosing records received in conducting the people's business unless disclosure is otherwise prohibited by law.

9. The prohibitions of the Contract Clause are not absolute and are counterbalanced by the Commission's significant and legitimate public interest in promoting transparency in the RPS program.

10. The Commission is exempt from the judicial review requirements of the California Administrative Procedures Act in all respects relevant to this decision.

11. RPS program rules under Section 399.12(j)(3) are neutral and uniformly apply to all parties in the RPS proceeding.

12. The party seeking protection of its documents always bears the burden of proof.

13. D.06-06-066 did not adopt an absolute minimum period of confidentiality that must be imposed to avoid violating Section 454.5(g) and Government Code Section 6254(k).

14. It is reasonable to reevaluate the window of confidentiality adopted in D.06-06-066 based on recent RPS contract execution to online generation timelines.

15. Declining RPS prices and increased overall contracted commitment in renewables by retail sellers in California indicate market competitiveness.

16. The large number of RPS-eligible projects that competed in past solicitations, and the large number of new RPS-eligible projects in the current CAISO interconnection queue also indicate market competitiveness.

17. It is reasonable to adopt revisions to the window of confidentiality that will promote a pro-competitive framework and allow greater public access to RPS data and could result in lower prices for RPS-eligible resources.

18. It is reasonable to conclude that earlier disclosure of RPS-eligible contract and bid prices does not disclose market sensitive information because the extensive competition in the market creates a strong incentive for developers seeking contracts to offer the lowest possible price.

O R D E R

IT IS ORDERED that:

1. We adopt a window of confidentiality for the Renewables Portfolio Standard compliance data on energy and capacity forecast (Megawatt-Hours and Megawatt) and Renewables Portfolio Standard Net Short Position (Megawatt-Hours and Megawatt), considered market sensitive pursuant to Public Utilities Code Section 454.5(g) or otherwise entitled to confidentiality protection for Investor-Owned Utility, Community Choice Aggregators, and Energy Service Provider that protects it for two years into the future and the year of filing.

2. We revise the confidentiality matrix, adopted in Decision 06-06-066, for allowed confidential treatment of Renewables Portfolio Standard (RPS) Data, attached hereto as Attachment 2. For purposes of confidential treatment, "RPS Data" means all RPS-eligible contracts entered into by retail sellers after the effective date hereof and all RPS compliance filings made by retail sellers beginning January 1, 2022. For all RPS Data, to the extent that they differ, the provisions of this decision and the revised confidentiality matrix supersede the provisions of Decision 06-06-066. Except as set forth in the revised confidentiality matrix, the provisions of Decision 06-06-066 continue to apply.

3. Retail Sellers amending a Renewables Procurement Standard procurement contract shall not modify the confidentiality requirements that apply to prior versions of the agreement, including the time frame for public information.

After an amendment, the terms are public 30 days after the new contract execution date.

4. This Order shall apply to contracts executed after this date, and bids submitted after this date.

5. This proceeding remains open.

This order is effective today.

Dated _____, at San Francisco, California.

Attachment 1

Data Summary for 2019 RPS compliance reports for utility-scale (≥ 20 Megawatt) RPS Power Purchase Agreements.

2019 RPS Compliance Reports submitted by retail sellers (investor-owned utilities and Community Choice Aggregators) in August 2020.

How to recreate the data -

Step 1 – Access the public webpage for RPS compliance reports: RPS Compliance and Reporting (ca.gov)

Step 2 - Access the following hyperlink on the page: Reporting Template and Compliance Report Archives

Step 3 - You can find these reports under the folder titled "**2019 Public RPS Compliance Reports.zip.**"

Step 4 – Combine RPS Power Purchase Agreements from all files.

Step 5 – In the "Data" tab, select "Filter"

Step 6 – In column Z "Contracted Capacity (Expected MW)," filter for items "Greater Than" and insert "20".

Step 7 – To calculate the number of days from Contract Execution to Commercial Online Date for each Power Purchase Agreement (PPA), subtract column R "Contract Execution Date" from column S "Commercial Online Date (COD)." Then divide that number by 365. The equation would appear as: "=(S2-R2)/365"

Step 8 – Apply the calculation from Step 7 to all PPAs.

Step 9 – To set the appropriate range of years, filter for the desired years using column R "Contract Execution Date."

Step 10 – Once the dataset is filtered to contain the appropriate range of years, use the output of the calculation from Step 7 for each PPA and calculate the average.

Step 11– To sort the results by IOU, CCA or Overall, filter by Column B "LSE Category."

Step 12 – To sort the result by technology, filter Column I "Resource Type."

SUMMARY TABLES -

Table 1: Years from Contract Execution to Commercial Online Date Under PPA for Contracts Executed in these years

Years	Overall Average	IOU Average	% CCA Contracts	CCA Average
2006-2020	2.97	3.1	n/a	2.5
2010-2020	2.94	3.1	n/a	2.5
2016-2020	2.68	3.4	80%	2.5
2017-2020	2.55	3.9	85%	2.4
2018-2020	2.30	2.1	95%	2.31

Table 2: Years from Contract Execution to Commercial Online Date Under PPA (2006-2020)

Technology	Overall Average	IOU Average	CCA Average
Biomass	1.9	1.9	n/a
Geothermal	3.1	3.2	1.8
Small Hydro	0.8	0.8	n/a
Solar PV	3.2	3.5	2.7
Solar Thermal	3.8	3.8	n/a
Wind	2.2	2.3	1.6

Table 3: Years from Contract Execution to Commercial Online Date Under PPA (2010-2020)

Technology	Overall Average	IOU Average	CCA Average
Biomass	2.0	2.0	n/a
Geothermal	2.4	2.6	1.8
Small Hydro	0.7	0.7	n/a
Solar PV	3.1	3.3	2.7
Solar Thermal	2.0	2.0	n/a
Wind	2.4	2.7	1.6

(End of Attachment 1)