BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.	Rulemaking 18-07-003 (Filed July 12, 2018)

REPLY COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS ON THE PROPOSED DECISION AND ALTERNATE PROPOSED DECISION ON CONFIDENTIALITY RULES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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In accordance with Rule 14.3 of the California Public Utilities Commission ("Commission" or "CPUC") Rules of Practice and Procedure, the Alliance for Retail Energy Markets ("AReM")[1] submits these reply comments in response to parties' opening comments on the September 16, 2021 *Proposed Decision of ALJs Lakhanpal and Sisto* ("Proposed Decision" or "PD") and the *Alternate Proposed Decision of Commissioner Rechtschaffen* ("Alternate Decision" or "AD") on Clarifying and Improving Confidentiality Rules for the Renewables Portfolio Standard Program ("RPS"). Specifically, AReM replies to the Joint IOUs' comments on the PD, and TURN's comments on the PD and AD, so that the Commission can correct certain legal errors found in those comments.

I. Reply to Joint Utilities Comments on PD

A. The Joint IOUs Misstate the Scope of § 399.12(j)(3).

In the context of lauding the PD's reference to Public Utilities Code § 399.12(j)(3) for the concept that all LSEs should be treated similarly, the Joint IOUs in fact misstate the scope of that

[1] AReM is a California mutual benefit corporation formed by electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of individual members or affiliates of its members with respect to the issues addressed herein.

statutory provision[2] by omitting critical contextual language that the symmetrical treatment called for in § 399.12(j)(3) is applicable only as to the RPS program codified in Article 16.[3] Article 16 is the California Renewables Portfolio Standard Program, §§ 399.11 *et seq*, only, not any other provision applicable to electrical corporations such as the Commission's public business of regulating IOU rates. As AReM stated in its opening comments highlighting error in the PD

> the symmetry of *compliance requirements* does not necessarily mean that the confidentiality of data used for compliance confirmation must be treated as if the Commission has ratemaking authority too, given key differences in the scope of Commission oversight of different retail seller types.[4]

The Joint IOUs echo the legal error found in the PD and AD, namely the bootstrapping of additional burdens on non-IOUs via regulatory requirements that exceed what is necessary to show compliance with the California RPS program by inappropriately extending the reach of § 399.12(j)(3). How confidential data is treated across different LSE types before the Commission *is not an RPS program compliance element* like characteristics of product content categories or levels of renewable energy deliveries from long-term supply contracts. Actions the Commission must undertake as part of their broader regulatory and rates oversight of public utilities are not extended to non-public utility entities like ESPs simply because both entities must comply with the RPS.

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[2] See Joint IOUs' Comments on PD, page 7: "The authority also exists under Section 399.12(j)(2) and (3) which requires that Community Choice Aggregators (CCAs) and Electric Service Providers (ESPs) 'shall be subject to the same terms and conditions applicable to an electrical corporation.'"

[3] The full text of § 399.12(j)(3): "(3) An electric service provider, as defined in Section 218.3. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation **pursuant to this article**. This paragraph does not impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code." (Emphasis added.)

[4] AReM Opening Comments, page 6.

While AReM disagrees with the Joint IOUs' comments on the reach of § 399.13(j)(3), we do agree that there should be *no* public disclosure of potential supplier bid data, as the Joint IOUs argue at pages 7 through 9. AReM agrees that the disclosure of losing bid information and aggregated data so close in time would more likely result in harms to the markets where California's LSEs compete. In this regard, AReM believes that such data should not be released by IOUs and that no similar data disclosure requirement should be extended to the non-IOUs via bootstrapping through §399.12(j).

II. Reply to TURN.

A. TURN's Request to Change Contract Naming Requirements Should Be Disregarded.

At pages 3 through 4, TURN complains that neither the PD nor AD embrace a proposal it presented to require ESPs and CCAs to improve what they consider to be "cryptic" naming conventions used in their RPS compliance reports for contracts that allow the supplier to deliver the contract quantities from among a pool of eligible resources. TURN says that its proposal is needed to "ensure that the disclosure requirements include details on the potential for identified generation facilities to be subject to substitution and to require the public disclosure and identification of deliveries from each facility in each RPS compliance report."

TURN's complaint here is essentially a request to address something that has nothing to do with data confidentiality per se, but appears more akin to a request to convert the RPS program from a *product* based compliance requirement to a *facility* based requirement. The Commission and Legislature have established very restrictive rules around RPS compliance, making it a very complex set of statutes and regulations. The basis for seeking compliance waivers should supplier's facilities fail to perform and the Commission's own directives with regard to the development of the annual RPS Plans means that LSEs should be seeking

reasonable commercial means to mitigate risks with potential facility or transmission underperformance.[5] The type of contract structures that TURN complains about here is precisely the type of agreements that seek to mitigate risks and ensure success in procuring the right types and quantities of renewable *products*, using a supplier determined set of resources to meet those requirements.

The whole of the RPS program, including the CEC's validation of eligible resource production, WREGIS' tracking of the certificates that denominate RECs in California, and the Commission's verification of product content category types, should provide sufficient assurances that there is no double counting of generation, and hence the validity of submissions for compliance periods. TURN's proposal to change rules around naming conventions should be presented in a different setting, perhaps more procedurally appropriate for a petition. That the Commission did not find the proposal worthy of substantive discussion on a proposed decision concerning confidentiality issues does not constitute legal or factual error that must be revised here.

III. Conclusion

AReM urges the Commission to avoid repeating the legal error reflected in the Joint IOUs' comments on the PD with respect to the scope of § 399.12(j)(3), and to deny TURN's request to modify certain contract naming provisions previously adopted by the Commission for ESP RPS contracts. AReM reiterates its request that modifications be made to the body of the PD or AD proposals as set forth in its opening comments.

[5] For example, the Commission directs LSEs to address risk mitigation for project underproduction in the RPS Plans, including addressing whether or why not they adopt minimum margins of over-procurement ("MMOP") to lessen potential non-compliance.

Dated: October 11, 2021

Respectfully submitted,

/s/

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VERIFICATION

I am the attorney for the Alliance for Retail Energy Markets ("AReM") and am authorized to make this verification on its behalf. AReM is absent from the County of Sacramento, California, where I have my office, and I make this verification for that reason. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on October 11, 2021 at Sacramento, California.

/s/

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