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**FILED**

01/29/24

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

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R1311005

Order Instituting Rulemaking  
Concerning Energy Efficiency Rolling  
Portfolios, Policies, Programs,  
Evaluation, and Related Issues.

Rulemaking 13-11-005

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING  
MOTION OF PUBLIC ADVOCATES OFFICE TO COMPEL DATA  
RESPONSES FROM RESOURCE INNOVATIONS**

**Summary**

This ruling grants the September 18, 2023, Motion of the Public Advocates Office (Cal Advocates) to Compel Data Responses from Resource Innovations. Resource Innovations is a consulting firm that was selected in a competitive bid as California's first independent Market Transformation Administrator (CalMTA). The ruling concludes that Cal Advocates' requests are reasonable as part of their statutory responsibilities for oversight of expenditures of ratepayer funds related to the launch of this new and innovative, high-profile effort.

**1. Cal Advocates' Motion to Compel**

On September 18, 2023, Cal Advocates filed a Motion to Compel Data Responses from Resource Innovations. Cal Advocates filed concurrently both a public version of the Motion to Compel, as well as a motion to file under seal a confidential version of the Motion to Compel. Cal Advocates seeks information related to Resource Innovations' administration and billing of employee or contractor hours against the program budgets for the CalMTA contract. The CalMTA contract was originally contemplated in Decision (D.) 19-12-021 and is

held by Pacific Gas and Electric Company (PG&E). The contract was submitted and approved in Advice Letter 4674-G/6747-E.

As part of the structure of CalMTA set up in D.19-12-021, there is an MTA Board that is set up to guide and review the MTA efforts and make recommendations for future program management in 2028. Cal Advocates is a member of the MTA Board.

Cal Advocates, in its Motion to Compel, argues that it requires the information requested in its data request to Resource Innovations in order to evaluate the administration of the market transformation program as part of a long-ranging view of the market transformation energy efficiency program and administration.

Cal Advocates points out that Resource Innovations has been a party to this proceeding since May 10, 2019, when its Motion for Party Status was granted by an Administrative Law Judge (ALJ) ruling.

In its Motion to Compel, Cal Advocates describes budget information presented by Resource Innovations to the MTA Board (MTAB) leading up to the submission of its first Annual Budget Advice Letter (ABAL), which was ultimately submitted to the Commission on July 31, 2023. Cal Advocates states that it seeks additional, more specific, information regarding the work performed by Resource Innovations, in order for Cal Advocates to fulfill its obligations as a member of the MTAB.

In particular, Cal Advocates states concerns about Resource Innovations only presenting information at a general level that calls into question labor rates, the potential for utilizing employees working at the parent organization who were simultaneously working on other contracts, and the potential for Resource

Innovations to increase staff rates to maximize budget allocations when other contractors may charge less.

According to Cal Advocates, its data request was originally presented to PG&E, which responded that it “does not have sufficient information to be responsive” to Cal Advocates’ questions, instead suggesting that Cal Advocates seek the information directly from Resource Innovations.

On August 9, 2023, Cal Advocates presented the data request directly to Resource Innovations, after review of the ABAL did not provide the information sought by Cal Advocates.

According to Cal Advocates’ Motion to Compel, Resource Innovations objected to the August 9, 2023, data request on the grounds that it is not a regulated entity subject to Cal Advocates’ discovery authority and the information sought in the data request is not currently pending in an open proceeding. Cal Advocates states that it re-issued the data request two more times in an attempt to address the objections raised by Resource Innovations, but still has not received the information requested from Resource Innovations. Cal Advocates also states that a meeting was conducted between Cal Advocates and Resource Innovations on September 6, 2023, in a good-faith attempt to resolve the dispute, but the parties were unable to resolve their conflict. Therefore, Cal Advocates filed the Motion to Compel.

As justification for its Motion to Compel, Cal Advocates argues that its data request complies with Public Utilities (Pub. Util.) Code Section 309.5 and Rule 10.1 of the Commission Rules of Practice and Procedure (Rules), for the following reasons:

1. Resources Innovations/CalMTA is a Commission-regulated entity.

2. Both Cal Advocates and Resource Innovations are parties to Rulemaking (R.) 13-11-005, which is an open and active proceeding.
3. The data request seeks information that is directly relevant to the subject matter involved in the pending proceeding and is either admissible or likely to lead to admissible evidence.
4. R.13-11-005, and not an advice letter protest, is the appropriate forum for discovery on issues that are directly within the scope of the rulemaking proceeding.

Cal Advocates argues that the market transformation budget is approximately 8 percent of the total energy efficiency budget and is therefore relevant to this rulemaking. Finally, Cal Advocates emphasizes that their data request involves charges billed to the contract funded by ratepayers and their direct relevance to evaluating the performance of CalMTA/Resource Innovations.

## **2. Resource Innovations' Response**

Resource Innovations responded to the Cal Advocates Motion to Compel on September 28, 2023. In its response, Resource Innovations focuses on what it characterizes as the legal shortcomings of the Cal Advocates data request, calling it "erroneous, unfounded discovery."

First, Resource Innovations disputes that it is a Commission-regulated entity. Instead, Resource Innovations states that it is a private corporation, not a public utility or entity regulated by the Commission under the Public Utilities Code.

Next, Resource Innovations argues that Rule 10.1 of the Commission's Rules does not apply or require responses to the questions posed by Cal Advocates, because CalMTA is not a "party" to R.13-11-005. Resource Innovations agrees, however, that it is a party to this proceeding and became one

for the purpose of joining a market transformation joint party proposal that was filed at the time (March 1, 2019).

Resource Innovations also argues that the subject matter of the data request is not part of the formal or evidentiary records in this proceeding, is not within the proceeding scope, and is not admissible evidence or reasonably calculated to lead to the discovery of admissible evidence. Resource Innovations focuses on the word “evidence,” citing to Pub. Util. Code Section 1701 through 1711, applying to “hearings, investigations, and proceedings.”

Resource Innovations also acknowledges that the current scoping memo of this proceeding lists “implementation of the market transformation framework adopted in D.19-12-021” in its list of “other issues” for which there are no specific steps currently scheduled, but argues that the word “evaluation” is never used, nor is there anything specific to CalMTA or its contract.<sup>1</sup> Therefore, Resource Innovations argues that it is “pure conjecture” on Cal Advocates’ part whether the market transformation issues will be the subject of any proceeding activity going forward, including evidentiary hearings.

Resource Innovations also discusses Attachment A to D.19-12-021, which is the “Adopted Market Transformation Framework,” and argues that it never uses the word “evaluation,” though it does discuss an MTAB review “at the end of five years.”<sup>2</sup>

In addition, Resource Innovations presents a lengthy description of the background for how the CalMTA contract was established and approved via

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<sup>1</sup> The most recent Amended Scoping Memo for this proceeding is dated May 11, 2023 and is available at the following link:

<https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=508571227>

<sup>2</sup> D.19-12-021, Attachment A, at 125.

advice letter. Resource Innovations argues that discovery pursuant to Rule 10.1 is meant for formal proceedings and is inapplicable to informal advice letters.

Resource Innovations argues that Cal Advocates' data requests "wholly ignores and seeks to undermine" the advice letter process adopted by the Commission to govern the selection and approval of an independent statewide MTA with PG&E as the fiscal agent. Resource Innovations argues that the advice letter is where Cal Advocates should have protested if it had concerns or objections. Resource Innovations argues that Cal Advocates could have filed a petition to modify D.19-12-021 if it did not like the advice letter process contained in the decision.

Resource Innovations also expresses concerns about the confidentiality of its data if it were to respond to the Cal Advocates data request. Resource Innovations cites to Pub. Util. Code Section 583(a) which applies to confidentiality of data of a public utility, which Resource Innovations states that it is not, and therefore it has no confidence that Cal Advocates would be required to keep its information out of the public sphere. Resource Innovations states concerns that its information could be shared outside of the Commission.

Finally, Resource Innovations argues that granting the Motion to Compel will have an adverse impact on the future of the CalMTA contract, and "chill Resource Innovations or any other private corporation from contracting to provide any service or product to the Commission or a Commission-regulated public utility going forward."

For all of these reasons, Resource Innovations asks that the Commission deny Cal Advocates' Motion to Compel with prejudice.

### **3. Cal Advocates' Reply**

Cal Advocates replied to the Resource Innovations response on October 9, 2023. Cal Advocates filed both a public version of its reply, as well as a motion to

file under seal a confidential version of its reply. In its reply, Cal Advocates focuses on three areas: Resource Innovations' status as a regulated entity, its discovery obligations within this proceeding under Rule 10.1 of the Commission's Rules, and the protection of confidential information.

Cal Advocates continues to assert that Resource Innovations is considered a regulated entity by the Commission, citing to a "Regulated Entity" list that is maintained on the Commission's internal Oracle software application. Cal Advocates also points out that Resource Innovations plans to bill against a PG&E contract, which is funded by ratepayers, and that is worth approximately \$300 million.<sup>3</sup> Cal Advocates argues that the CalMTA program is administered by Resource Innovations, Resources Innovations bills PG&E, dedicates staff and office space to CalMTA, and hosts the CalMTA web site.<sup>4</sup> Cal Advocates also argues that utility contracts with third-party entities routinely contain standard language making the contracting parties and the operations subject to Commission audits or investigations.

On Resource Innovations' obligations as a party to the proceeding under Commission Rule 10.1, Cal Advocates argues that Resource Innovations is wrong to suggest that the appropriate venue for Cal Advocates was the advice letter process to the exclusion of the formal proceeding. Cal Advocates argues that it has discovery rights that are expansive, authorizing it to "obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of

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<sup>3</sup> Cal Advocates' October 9, 2023 Reply at 3.

<sup>4</sup> Cal Advocates' October 9, 2023 Reply at 4.

admissible evidence.”<sup>5</sup> Cal Advocates also cites to numerous rulings and decisions upholding its discovery rights.<sup>6</sup>

Cal Advocates also argues that D.19-12-021 did not remove administration and implementation of the CalMTA contract from the subject matter of this proceeding and reiterates that the most recent scoping memo still lists implementation of the market transformation framework.

Finally, on the topic of maintaining confidentiality of materials, Cal Advocates argues that the Commission’s General Order 66-D<sup>7</sup> provides the legal basis by which any response by Resource Innovations would be subject to confidentiality protection. Cal Advocates further argues that some of its data request questions stem from a public presentation made by Resource Innovations and linked on the CalMTA web site, and therefore some of the information may be public already.

#### **4. Discussion**

First, we grant both the September 18, 2023, and October 9, 2023, motions of Cal Advocates to file both the original Motion to Compel under seal, as well as its reply. The confidential versions of both documents contain some references to provisions in the Resource Innovations contract with PG&E, which is confidential material. Therefore, the confidential versions of the Motion to Compel of September 18, 2023, and the Cal Advocates reply of October 9, 2023, shall remain under seal, accessible only to Commission staff, administrative law judges, and Commissioners and their advisors.

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<sup>5</sup> Cal Advocates’ October 9, 2023, Reply at 6.

<sup>6</sup> Cal Advocates’ October 9, 2023, Reply at 6, footnote 35.

<sup>7</sup> Specifically, General Order 66-D, Section 1. (1.6).



This ruling does not conclude that Resource Innovations is a Commission-regulated entity. It is not necessary, however, for Resource Innovations to be a Commission-regulated entity in order to be compelled to provide the requested information by Cal Advocates.

As Resource Innovations is well aware, it is the selected administrator and implementer for the market transformation framework adopted in D.19-12-021. Resource Innovations is under contract to PG&E for work funded by electricity and natural gas ratepayers and approved in Advice Letter 4674-G/6747-E. Resource Innovations is also a party to this proceeding.

Resource Innovations' argument that Cal Advocates' data request related to expenditures on market transformation activities is not within the scope of this proceeding is baseless. D.19-12-021, which established the market transformation framework, was issued in this proceeding. Market transformation "implementation" is listed in the most recent Amended Scoping Memo from May 11, 2023; the same topic also appears in the previous two Amended Scoping Memos from December 23, 2021, and July 3, 2020. The Amended Scoping Memo in this proceeding dated April 26, 2018, contains an expansive discussion of market transformation. Just because D.19-12-021 delegated the approval of the contract for a market transformation administrator to an advice letter process does not remove market transformation oversight from the scope of this proceeding. Similarly, the fact that the exact word "evaluation" does not appear in the most recent Amended Scoping Memo when discussing market transformation does not make the Cal Advocates data request inappropriate.

In addition, Resource Innovations is also well aware that its CalMTA contract is an extremely high-profile effort, as evidenced by the joint press release issued by the Commission and Resource Innovations when the contract

was approved.<sup>8</sup> The CalMTA effort is not a typical consulting assignment for Resource Innovations and it should not be treated as such. Resource Innovations should expect a higher-than-average level of scrutiny for this first-of-its-kind effort.

As part of its winning bid for the CalMTA contract, Resource Innovations also included plans ultimately to facilitate a transition of CalMTA to a non-profit entity, complete with a Commission-approved non-profit Board of Directors, a set of bylaws, a governance structure, and other policies.<sup>9</sup> The CalMTA web site's home page also refers to the CalMTA as "a program of the California Public Utilities Commission." These items make it obvious that this effort is much more high-profile and larger than an average energy efficiency implementation contract with an investor-owned utility. Therefore, Resource Innovations should treat this assignment accordingly. Resource Innovations should want to cooperate fully with any inquiries about its operations and expenditures.

Cal Advocates and Resource Innovations are also both undisputed parties to this proceeding. As such, Cal Advocates is allowed to seek discovery under Rule 10.1. Rule 10.2, based on Pub. Util. Code Section 1794, also allows some discovery even from a non-party, though it may be more limited, but still includes being "required to attend and testify at an oral or written deposition, or to produce business records for copying, or both to attend and testify and to

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<sup>8</sup> See the Commission's joint press release with Resource Innovations announcing the launch of CalMTA at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fdocs.cpuc.ca.gov%2FPublishedDocs%2FPublished%2FG000%2FM501%2FK802%2F501802892.docx&wdOrigin=BROWSELINK>

<sup>9</sup> More information is available on the CalMTA web site, which includes a Market Transformation Policy Manual, available at: <https://calmta.org/resources-and-reports/calmta-releases-market-transformation-policy-manual/>

produce business records, other writings, and things.”<sup>10</sup> The conduct of discovery by parties to a proceeding also does not require that evidentiary hearings be scheduled.

In addition, Cal Advocates is not just another party in a Commission proceeding. Cal Advocates was established by statute to “represent the interests of public utility customers and subscribers in commission proceedings.”<sup>11</sup> As part of its authority, Cal Advocates may “compel the production or disclosure of any information it deems necessary to perform its duties from entities regulated by the commission.”<sup>12</sup>

Cal Advocates would also be within its rights to compel the information from PG&E, as the regulated entity. PG&E would be equally within its rights, as the contract holder, to demand the information from Resource Innovations to provide to Cal Advocates as requested.<sup>13</sup> It will be much simpler if Resource Innovations simply provides the requested information to Cal Advocates.

Finally, as to confidentiality of the requested information, Cal Advocates staff are governed by General Order 66-D in the same manner as Commission advisory staff such as Energy Division. Thus, if Resource Innovations asserts that confidential treatment is required, and under General Order 66-D Resource Innovations will be required to explain the basis for the requested confidentiality, Cal Advocates will be required to maintain that confidentiality unless the Commission orders otherwise.

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<sup>10</sup> See Code of Civil Procedure, Section 2020.

<sup>11</sup> See Public Utilities Code Section 309.5.

<sup>12</sup> Public Utilities Code Section 309.5(e).

<sup>13</sup> For a full discussion of the rights and responsibilities of Cal Advocates, parties may refer to D.01-08-062.

**IT IS RULED** that:

1. The September 18, 2023, Motion to File Under Seal a Motion to Compel of the Public Advocates Office is granted. The material in the confidential version of the Motion to Compel shall remain under seal, accessible only to Commission staff, administrative law judges, Commissioners, and their advisors.
2. The October 9, 2023, Motion to File Under Seal the Reply of the Public Advocates Office is granted. The material in the confidential version of the Reply shall remain under seal, accessible only to Commission staff, administrative law judges, Commissioners, and their advisors.
3. The September 18, 2023, Motion of the Public Advocates Office to Compel data Responses from Resource Innovations is granted.
4. Resource Innovations shall provide the requested information to Cal Advocates within ten calendar days of the publication of this ruling.
5. Resource Innovations shall provide any confidential material in accordance with the requirements of Commission General Order 66-D.

Dated January 29, 2024, at San Francisco, California.

/s/ JULIE A. FITCH  
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Julie A. Fitch  
Administrative Law Judge