

**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  
(Filed July 12, 2018)

**COMMENTS OF THE CALIFORNIA ENERGY STORAGE ALLIANCE  
ON THE PROPOSED DECISION AND ALTERNATE PROPOSED DECISION  
CLARIFYING AND IMPROVING CONFIDENTIALITY RULES FOR THE  
RENEWABLES PORTFOLIO STANDARD PROGRAM**

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In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the California Energy Storage Alliance (“CESA”) hereby submits these comments on the *Proposed Decision Clarifying and Improving Confidentiality Rules for the Renewables Portfolio Standard Program* (“PD”), issued by Administrative Law Judges (“ALJs”) Manisha Lakhanpal and Carolyn Sisto on September 16, 2021, and on the *Alternate Proposed Decision Clarifying and Improving Confidentiality Rules for the Renewables Portfolio Standard Program* (“APD”), issued by Commissioner Rechtschaffen on September 16, 2021.

**I. INTRODUCTION.**

In an effort to promote transparency and increase the value to ratepayers in light of changing and maturing conditions for resources eligible under the Renewable Portfolio Standard (“RPS”) Program, the Commission finds a need to make regulatory changes effective immediately and advance the public interest by disclosing RPS prices and contract terms.<sup>1</sup> Upon conducting its legal analysis, reviewing parties’ comments to the Staff Proposal, and assessing the time it has

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<sup>1</sup> PD and APD at 22.

taken for recent RPS projects to come online on average in just under three years, the Commission is largely aligned in this regard and view the current confidentiality rules as out of date with these observations. The PD and APD only differ in terms of the specific amount of time lag between when various contractual and bid information is made publicly available, with the PD favoring longer periods (though shorter than the status quo rules) of RPS contract and bid information confidentiality than the APD.

While CESA broadly supports the Commission's intended goal to promote transparency and the public interest in principle and understands the potential need to rebalance the needs for appropriate time period of confidentiality, we still maintain significant concerns with both the PD and APD in requiring the disclosure of market-sensitive and competitive information that could chill the market for participation in any load-serving entity ("LSE") solicitation, especially if information is not aggregated and delve into specific bid components rather than the overall contract price. By no means does CESA aim to be "dismissive" to transparency or advocate for confidentiality in perpetuity,<sup>2</sup> but at the same time, the Commission should not dismiss the material impacts of the premature disclosure of bid prices and other market-sensitive information on the presumption that developers would forego significant business opportunities.<sup>3</sup> Even though California has been the leading state, the market for renewables and energy storage project development is now global, such that developers could be deterred from market participation in California's RPS Program if it comes at the cost of disclosing competitive information.

Additionally, at a high level, CESA remains unclear on the "public interest" that the PD and APD aim to serve that is not already addressed through existing reports such as the Padilla

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<sup>2</sup> PD and APD at 16-17 and 22.

<sup>3</sup> APD at 58.

Report or through existing oversight mechanisms intended to protect the public interest through fair and reasonable processes and independent assessments of bid evaluation results, such as through the Procurement Review Groups (“PRGs”) and independent evaluators (“IE”) in the case of investor-owned utility (“IOU”) procurements. Rather than citing issues with the current confidentiality rules that are intended to be resolved, the PD and APD state that the existing mechanisms for disclosure to regulators and ratepayer advocates is not sufficient or the same and instead support these changes on general principles of transparency.<sup>4</sup>

Notwithstanding the aforementioned concerns, at minimum, if the Commission is intent on moving forward with modifications to the RPS confidentiality rules, CESA recommends that the Commission adopt the PD to establish a timeline for RPS eligible procurement contracts to become public 30 days after commercial online date (“COD”) and energy delivery start date, modified to eliminate the “whichever comes first” criteria that sets a maximum three-year confidentiality period. This more appropriately balances the Commission’s goal to balance public transparency with protection of market-sensitive information within reason.

## **II. PROMPT DISCLOSURE OF CONTRACT PRICES WOULD IMPACT OTHER CONCURRENT OR NEAR-TERM SOLICITATIONS AND CHILL MARKET PARTICIPATION.**

Since Decision (“D.”) 06-06-066 keeps procurement prices confidential for three years after the COD or until one year following the expiration of the contract, whichever comes first,<sup>5</sup> CESA understands the Commission’s desire to change the confidentiality rules, which allow contract price data to be confidential for 5-10 years from contract execution,<sup>6</sup> even as the RPS

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<sup>4</sup> PD at 44.

<sup>5</sup> D.06-06-066 Appendix 1 Section VII.

<sup>6</sup> PD and APD at 40-41.

Program has experienced robust market participation. This amount of time lag is understandably not helpful. To this end, the PD strikes a more appropriate balance by observing that many projects advance from contract execution to COD within three years on average and by understanding that there are “contemporaneous bids” that could lead to adverse impacts if there is not a reasonable time lag between confidentiality and eventual public disclosure.<sup>7</sup> Even as the PD establishes a three-year minimum timeline from Commission approval (for contracts requiring such approval) or from contract execution (for contracts in all other cases) to publicly disclose contract prices and terms, this time lag provides regulatory certainty and strikes a reasonable balance that reflects general market trends of declining RPS-eligible technology and project costs and a healthy number of mature market participants. In a state where there are multiple load-serving entities (“LSEs”), this time lag will ensure that market participants and their bids in overlapping, concurrent, or consecutive solicitation schedules are not adversely impacted. However, at the same time, CESA recommends that the PD be modified to require confidentiality period end within 30 days of the COD. The project development process does not end upon contract approval or after a three-year period, such that public disclosure of prices prior to COD would lead to material harm as developers procure equipment from suppliers and construct projects through various vendors and sub-contractors.

By contrast, the APD makes the case for prompt disclosure of RPS-eligible contract prices and proposes the adoption of a six-month window for confidentiality after Commission approval or after contract execution.<sup>8</sup> However, such an abbreviated time lag is insufficient to guard against adverse outcomes where market-sensitive information will be publicly disclosed even as other

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<sup>7</sup> PD at 42-43.

<sup>8</sup> APD at 43.

LSEs may be actively conducting their own solicitations for RPS resources, thereby impacting their competitive outcomes. Market participation in general may be chilled as well if a given developer knows that their key competitive advantages and strategies are ascertainable from the publicly disclosed information within a six-month window from contract approval or execution to all other market participants who may be competing with them in other ongoing or near-term solicitations. In other words, market participants who invest in developing these competitive advantages and strategies could be deterred from participating in solicitations altogether, knowing that their trade secrets will be disclosed upon their successful contract approval or execution – a trade of short-term success for long-term loss of these competitive advantages. Especially in cases where market participants invest in innovative project concepts, configurations, sourcing strategies, and technologies, prompt public disclosure requirements as laid out in the APD would be harmful and disincentivize such innovation.

The APD also explains that a six-month lag actually translates to bids being more than 12 months out of date, factoring in the time that has elapsed when the bid was first submitted and/or revised in the shortlisting process.<sup>9</sup> However, this point only serves to highlight how a greater time lag for public disclosure is needed given the increased likelihood of the overlap of ongoing or near-term solicitations by multiple LSEs, who likely have 12-month or longer cycles for procurement, such that at any given point, an LSE is in active negotiation with developers. It is not correct to presume that bids will be out of date, or the pool of bids will necessarily change after this short time period given how projects are not always developed at one point in time and then abandoned. Certain projects may be developed over time and/or resubmitted to different LSEs and solicitations.

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<sup>9</sup> APD at 44-45.

Furthermore, the APD makes a major assumption that prompt public disclosure would avoid market manipulation, protect ratepayers from higher costs, and could result in lower costs to ratepayers,<sup>10</sup> even as the Commission is advancing a substantial reform to the confidentiality rules that have been in place for some time. Other than pointing to the fact that RPS projects have been coming online more quickly over the years, the APD’s rationale for the impact of the six-month confidentiality window is conjecture. Rather than dramatically changing the confidentiality window to six months, the PD with modifications represents a more reasoned and incremental approach to the Commission’s intent to update regulations and increase public transparency, avoiding potentially disruptive impacts to market participation. When the state needs to procure significant amounts of zero-carbon generation pursuant to D.21-06-035 while maintaining steady but substantial progress toward long-term 2045 decarbonization goals, a more risk-mitigated approach should be pursued, especially as the current confidentiality rules do not appear to represent a major problem to solve in CESA’s view considering existing reports and oversight mechanisms but something that is better in line with the general principle of greater public transparency. Upon review of the impact of the PD’s more incremental changes to confidentiality rules, the Commission should then consider whether these rules need to be modified further.

**III. INDIVIDUAL CONTRACT AND BID INFORMATION SHOULD NOT BE DISCLOSED, PARTICULARLY FROM UNSUCCESSFUL BIDS, AND SHOULD INSTEAD BE AGGREGATED.**

The PD and APD agree that “timely release of individual contract and bid information will have a minimal negative impact on the project’s viability, contemporaneous negotiations, and procurement prices” and thus would authorize the release of aggregated bid information that do not result in contracts or are not shortlisted after final contracts are submitted for Commission

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<sup>10</sup> APD at 44-45.

approval.<sup>11</sup> CESA disagrees with the need to publicly release information on unsuccessful bids, where it is unclear on the value to public interest in doing so. Instead, disclosures of unsuccessful bids may only serve to deter innovation and do not have an impact on rates since these unsuccessful projects were ultimately not selected and procured. At minimum, all individual bid information should be aggregated to avoid publicly disclosing market-sensitive and competitive information of any single developer or company. For public interest purposes, it should be sufficient to review how approved/executed contracts fared and ranked against the general pool of projects in a solicitation.

#### IV. CONCLUSION.

CESA appreciates the opportunity to submit these comments on the PD and APD and looks forward to working with the Commission and stakeholders in the RPS proceeding.

Respectfully submitted,



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<sup>11</sup> PD at 56 and APD at 58.