

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

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

Rulemaking 05-06-040
(Filed June 30, 2005)

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION PETITION FOR
MODIFICATION OF DECISION 06-06-066 AS AMENDED BY
DECISIONS 07-05-032, 06-12-030, AND 08-04-023**

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Pursuant to Rule 16.4 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the California Community Choice Association (CalCCA)¹ hereby submits this Petition for Modification of Decision (D.) D.06-06-066 as amended by D.07-05-032, D.06-12-030, and D.08-04-023. The Petition meets the requirements of Rule 16.4(d), as detailed in Section IV.

I. INTRODUCTION AND EXECUTIVE SUMMARY

Decision 06-06-066, which implemented Senate Bill (SB) 1488,² established detailed procedures to be followed when an investor-owned utility (IOU) seeks confidential treatment of “market sensitive” information submitted in procurement plans and related documents. In establishing these procedures, the Commission adopted “confidentiality conclusions” in the

¹ California Community Choice Association represents the interests of 19 community choice electricity providers in California: Apple Valley Choice Energy, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Monterey Bay Community Power, Peninsula Clean Energy, Pioneer Community Energy, Pico Rivera Innovative Municipal Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Jacinto Power, San Jose Clean Energy, Silicon Valley Clean Energy, Solana Energy Alliance, Sonoma Clean Power, and Valley Clean Energy.

² Sen. Bill 1488 (2003-2004 Reg. Sess.) (Stats. 2002, ch. 690).

“IOU Matrix,” so that an IOU seeking confidential treatment is required only to demonstrate that the information matches a category specified in the Matrix.³ While acknowledging the statute does not extend to energy service providers (ESPs),⁴ the Commission concluded that “[t]he *process* for dealing with confidential documents should be the same regardless of who claims entitlement to protection.”⁵ It thus extended its procedures to ESPs, adopting a separate “ESP Matrix,” specifying that information would be treated as confidential if the ESP could demonstrate that it matches a category specified in the Matrix.⁶

While Community Choice Aggregation (CCA) providers were authorized before D.06-06-066 was issued,⁷ at that time no CCA had yet been formed. Consequently, while the Commission generally stated that the process should apply “whether the producing party is an IOU, an ESP, a future Community Choice Aggregator, or any other entity,”⁸ it did not directly address CCAs or provide a “CCA Matrix.” Since that time, nineteen (19) CCAs launched in California.⁹

The Commission recently directed CCAs to provide market-sensitive information to the Energy Division. Specifically, D.18-10-019 issued in Phase 1 of the Power Charge Indifference Adjustment (PCIA) proceeding requires CCAs, along with other jurisdictional Load-Serving Entities (LSEs), to report their Resource Adequacy (RA) and Renewable Portfolio Standard (RPS) transactions annually to Energy Division Staff. CalCCA, on behalf of its members, has

³ Decision (D.)06-06-066 at 80, Ordering Paragraph 2.

⁴ *Id.* at 78, Conclusion of Law 16.

⁵ *Id.* at 52.

⁶ *Id.* at 80, Ordering Paragraph 2.

⁷ Assem. Bill No. 117 (2001-2002 Reg. Sess.) (Stats. 2002, ch. 838).

⁸ *Id.* at 83, Ordering Paragraph 10.

⁹ *See*, Q1 2019 Update, California Community Choice Association, <https://mailchi.mp/cal-cca/calcca-q1-2019-update>.

addressed confidentiality of the RA and RPS reports piecemeal, in both the RA and PCIA proceedings.¹⁰

In light of the new and ongoing reporting requirements, CalCCA requests modification of D.06-06-066 to make clear that the decision's protections apply to CCAs and to provide a "CCA Matrix" to identify protected information.

Rulemaking (R.) 05-06-040, under which D.06-06-066 was decided, was officially closed by D.19-04-012. CalCCA respectfully requests the Rulemaking be reopened to implement the modification to D.06-06-066 requested herein.

II. BACKGROUND

A. Decision 06-06-066 Establishes Procedures for Handling Confidential Procurement-Related Information

In R.05-06-040 the Commission considered the implications of California Public Utilities Code section 454.5(g), which provides:

[t]he 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 of these, 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.¹¹

The Commission implemented the statute in D.06-06-066 by categorizing procurement data likely to be submitted to the Commission and deeming certain categories of information eligible

¹⁰ Motion for Leave to Submit Information to Staff Under Seal, April 27, 2018 (hereafter, RA Confidentiality Motion); Motion of California Community Choice Association For Leave to Submit Information to Staff Under Seal, January 24, 2019 (hereafter, RPS Confidentiality Motion).

¹¹ Cal. Pub. Util. Code, § 454.5(g).

for confidential treatment. The categories of information deemed confidential were identified in an “IOU Matrix” and “ESP Matrix” appended to the decision.¹²

It appears the Commission intended in D.06-06-066 to apply the process created by that Decision to confidential information regardless of which type of entity submits the information: “[The] general process should apply whether the producing party is an IOU, an ESP, a future Community Choice Aggregator, or any other entity.”¹³ However, the matrices used to apply the strictures of D.06-06-066 do not apply to Community Choice Aggregators.¹⁴ Thus, while CCAs were contemplated by the Decision, the mechanism by which a CCA’s information would be granted confidential treatment was not specified.

B. CCAs Voluntarily Complied with an Energy Division Data Request for Resource Adequacy Data in 2018 and Were Granted Leave to Submit Confidential, Market-Sensitive Information Under Seal.

In 2018 the Energy Division issued data requests by which CCAs and other LSEs were directed to submit price data for resource adequacy contracts, including the amount of capacity under contract, the amount of system, local, and flexible capacity under contract, and the prices under such contracts (the 2018 RA Data Request).¹⁵ In response to the 2018 RA Data Request CalCCA filed a Motion for Leave to Submit Information to Staff Under Seal on behalf of its members on April 27, 2018 (RA Confidentiality Motion). The RA Confidentiality Motion specifically sought confidential treatment of information regarding the amount of each type of capacity under contract, and the capacity price.

On May 18, 2018, Administrative Law Judge Chiv issued a Ruling granting CalCCA’s request (May 18, 2018 Ruling). The ruling provides that CCAs may submit specified categories

¹² D.06-06-066, at Appendix 1, Appendix 2.

¹³ *Id.* at 83, Ordering Paragraph 10.

¹⁴ *Id.*, at Appendix 1, Appendix 2.

¹⁵ Email from Lily Chow, January 24, 2018.

of information under seal and that such information shall be kept confidential for a period of three years from the date of the RA Data Request, or until a Commission decision supersedes the Ruling.¹⁶ The ruling also includes a succinct summary of the situation: “Decision 06-06-066 addressed confidentiality designations as applied to market-sensitive procurement information, including CCAs, but the Confidentiality Matrices set forth in that decision apply specifically to investor-owned utilities and energy service providers.”¹⁷

The Commission issued D.18-10-019 in the PCIA proceeding in October of 2018. The Decision directs that a weighted average of system, local and flexible RA prices, as published in the Energy Division’s annual RA report, will be used to establish the “RA Adder.”¹⁸

Accordingly, in February of 2019, the Energy Division issued a data request to all jurisdictional LSEs, seeking “monthly capacity prices paid by [or to] LSEs for every capacity contract covering the 2018-2022 compliance years.”¹⁹ CalCCA did not seek further protection for this data on behalf of its members in light of the May 18, 2018 Ruling, which granted confidential treatment to the following categories of information: (1) generic capacity under contract (MW); (2) flexible capacity under contract (MW); (3) capacity price (\$kW/month); (4) system or local capacity (MW); and, (5) flexible capacity (MW).²⁰

C. CCAs Were Granted Leave to Submit Confidential, Market-Sensitive Information on RPS Transactions Under Seal in the PCIA Proceeding

The PCIA Decision also directs CCAs, as well as the IOUs and ESPs, to submit transaction information to the Commission’s Energy Division for the purposes of calculating the

¹⁶ Administrative Law Judge’s Ruling Granting the California Community Choice Association’s Request to Submit Information Under Seal (hereinafter, May 18, 2018 Ruling), May 18, 2018, at 2.

¹⁷ *Id.* at 1-2.

¹⁸ D.18-10-019, at Appendix 1.

¹⁹ Email from Simone Brant, February 5, 2019.

²⁰ May 18, 2018 Ruling at 2.

“Renewable Portfolio Standard Adder.”²¹ The Energy Division is directed to use the information to “calculate a weighted average RPS contract price (\$/MWh) for RPS energy”²² to establish the RPS Adder used to calculate the annual PCIA.²³

Accordingly, the Energy Division issued a data request to CCAs on January 14, 2019, requesting their RPS transaction data for 2018 (RPS Data Request). As the Decision requires, the requested data includes information regarding the Seller and the resource ID, and the contract price (\$/MWh) with and without any time-of-delivery adjustments.²⁴

In response to the RPS Data Requests, CalCCA filed a Motion for Leave to Submit Information to Staff Under Seal on behalf of its members on January 24, 2019 (RPS Confidentiality Motion). On March 20, 2019, Administrative Law Judge Atamturk issued a Ruling providing that the procedures and treatment for requesting confidential information applied to ESPs under D.06-06-066 extend to CCAs for the purposes of compliance obligation under Ordering Paragraph 5 of D.18-10-019—related Energy Division data requests, and any other additional related submissions in R.17-06-026, until such time as the ruling is superseded by a Commission decision or ruling (March 20, 2019 Ruling).²⁵

III. DISCUSSION

A. Information Sought in the RA and RPS Data Requests Is Confidential, Market-Sensitive Information

The RA and RPS Data Requests seek confidential and highly market-sensitive information: specifically, the contract prices paid and associated data for each CCA’s resource adequacy and renewable energy transactions. Disclosure of this information would place the

²¹ D.18-10-019 at 159-161, Ordering Paragraphs 1, 5.

²² *Id.* at 64.

²³ *Id.* at 160-161, Ordering Paragraph 5.

²⁴ *Id.*

²⁵ May 18, 2018 Ruling at 2.

contracting CCA at a competitive disadvantage to other LSEs and market participants, and thereby compromise the CCA's ability to procure resources on terms favorable to its ratepayers. Attesting to the market-sensitivity of this information, Appendices 1 and 2 to D.06-06-066 categorize all but summaries of the specific contracts, when submitted by an IOU or ESP, to be treated confidentially for three years from the date of contract or, if earlier, one year following contract expiration.

B. D.06-06-066 Should Be Modified to Provide a Standard Procedure for Treating Confidential and Market-Sensitive Information Submitted By CCAs

Under the May 18, 2018 Ruling in R.17-09-020, specified categories of information submitted by CCAs are granted confidential treatment. The March 20, 2019 Ruling, in R.17-06-026, affirmed that the general matrix process set forth in D.06-06-066 applies to CCAs, referring CCAs to the ESP Matrix in particular.²⁶ However, the Ruling denied the RPS Motion on procedural grounds and did not specifically address whether the data at issue should be treated as confidential.²⁷ Although both Rulings are significant steps toward clarity, there are still obvious areas of confusion. Both Rulings are also limited in scope, and neither is capable of applying D.06-06-066 consistently to CCAs for all purposes going forward.

A Commission decision is necessary to resolve, finally and formally, confidentiality issues as applied to submissions by CCAs. Thus, CalCCA respectfully requests on behalf of its members that D.06-06-066 be modified to include CCAs specifically in a new matrix to be attached as Appendix 2A to the Decision. The new matrix, a form of which is attached as Exhibit 1 hereto, is identical to the existing matrix applicable to ESPs. Under the new matrix the

²⁶ *Id.* at 4.

²⁷ Administrative Law Judge's Ruling Responding to the California Community Choice Association's Motion to Submit Information to Staff Under Seal (March 20, 2019 Ruling), March 20, 2019, at 3.

procedure for handling such information when submitted by CCAs would be identical to the procedure for handling such information when it is submitted by an IOU or ESP.

C. Ordering Paragraph 11 of D.06-06-066 Should Be Modified to Refer to CCAs' Obligations under the California Public Records Act

Ordering Paragraph 11 of D.06-06-066 specifies:

Intervenor groups that are non-market participants shall not be precluded from access to any ESP or IOU data as long as they agree to a protective order or confidentiality agreement where there is a need to protect the data.²⁸

Unlike IOUs or most ESPs, however, CCAs are subject to the California Public Records Act.²⁹ As such, CCA information is subject to disclosure absent a specific exception provided in the Act.³⁰ CalCCA respectfully requests that an additional sentence be included in Ordering Paragraph 11 to refer to the CCA's existing obligations, as follows:

CCAs will make data available in accordance with the California Public Records Act.

IV. THIS PETITION MEETS THE REQUIREMENTS OF RULE 16.4(D)

Rule 16.4(d) requires a petitioner to explain "why the petition could not have been presented within one year of the effective date of the decision." Through this Petition, CalCCA seeks to protect the interests of its current membership, as well as local communities investigating whether to establish CCA programs. Decision 06-06-066 protects from public disclosure certain market sensitive information acquired by IOUs and ESPs as electricity market participants. CalCCA's member CCAs likewise are market participants whose market sensitive information warrants a presumption of confidentiality. Because no CCA had yet been formed in

²⁸ D.06-06-066 at 83, Ordering Paragraph 11.

²⁹ Cal. Gov. Code, §§ 6250, *et seq.*

³⁰ *Id.* at § 6253.

2006 when D.06-06-066 was issued,³¹ the decision did not expressly address protection of market sensitive information acquired by a CCA. Additionally, modification is supported by the Commission's recent actions requiring all jurisdictional LSEs in D.18-10-019 to report annually on transactions and prices for RA and RPS transactions. For these reasons, this Petition meets the requirements of Rule 16.4(d).

V. CONCLUSION

For the aforementioned reasons, on behalf of its members CalCCA respectfully requests the Commission modify D.06-06-066, as amended by D.07-05-032, D.06-12-030, and D.08-04-023, to make clear that its provisions govern confidentiality of CCA market sensitive information and to specify that CCA data will be included in the attached form of "CCA Matrix" for all purposes. To implement this change, CalCCA respectfully requests R.05-06-040 be reopened.

Respectfully submitted,



Counsel for California Community Choice
Association

January 21, 2020

³¹ The first CCA, Marin Clean Energy, was formed in 2010.

EXHIBIT 1
Appendix 2A to D.06-06-066-CCA Matrix

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Community Choice Aggregator (CCA) Data		
Item	Public/Confidential Treatment	Explanation of Item
I) Renewables Portfolio Standard (RPS) Information		
A) Renewable Portfolio Standard (RPS) compliance filings required by California Public Utility Commission (CPUC), by CCA	Public	Includes one-time and recurring reporting. Shows current and projected contents of a CCA's RPS portfolios, including sales and resource mix.
B) Annual RPS compliance filings, by CCA	Public	Includes Annual Procurement Target (APT) reporting required in Rulemaking (R.) 04-04-026 and all other required reports.
C) RPS contracts	Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date. Other terms confidential for three years, or until one year following expiration, whichever comes first. ¹	

¹ Where this Matrix allows confidential treatment for a period of time, that period shall begin on the first date a CCA submits the data to the Commission.

EXHIBIT 1
Appendix 2A to D.06-06-066-CCA Matrix

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Community Choice Aggregator (CCA) Data		
Item	Public/Confidential Treatment	Explanation of Item
II) Resource Adequacy Information		
Detailed load forecasts (both year ahead and month ahead)	Front three years of forecast data confidential	Year ahead data show that CCA has secured adequate generation capacity to cover 90% of its forecast peak load for next year's summer months. Month ahead data show that CCA has secured adequate capacity to cover 100% of its forecast load plus a reserve requirement
III) Load Forecast Information and Data – Electric		
A) Load Servicing Entity (LSE) demand forecasting methodology	Public	General descriptive information regarding the methodology used by LSEs when estimating future expected electric capacity and energy needs.
B) LSE Total Peak Load Forecast - (MW)	Front three years of forecast data confidential.	Each LSE's own forecast of its bundled customer peak load. CCAs file annual and monthly data in CEC IEPR Forms 1.3 (annual sectoral peak demand forecasts) and 1 (monthly peak demand for total CCA peak load)
C) LSE Total Energy Forecast – (MWh)	Front three years of forecast data confidential.	CCAs file annual and monthly data in CEC IEPR Forms 1.3 (annual sectoral energy forecasts) and 2 (monthly energy forecast on a total CCA load basis)
D) Total Peak Demand Load Forecast – Investor-Owned Utility (IOU) Planning Area (MW)	Annual and Quarterly data: Public. Monthly and Daily data: Front three years of forecast data	CCAs file annual and monthly data in CEC IEPR Forms 1.3 (annual forecasts) and 2 (monthly forecasts). When CCA data aggregated with that of other LSEs, can create planning area forecast.

EXHIBIT 1
Appendix 2A to D.06-06-066-CCA Matrix

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Community Choice Aggregator (CCA) Data		
Item	Public/Confidential Treatment	Explanation of Item
	confidential.	
E) Detailed load forecasts filed in spring for upcoming year, by energy service provider (ESP)	Upcoming year forecast confidential; public once data is one year old.	
IV) Bilateral Contract Terms and Conditions – Electric		
A) Contracts and power purchase agreements between CCAs and IOUs (except RPS)	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date.</p> <p>Other terms confidential for three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.</p>	Specific contracts between the IOU and CCA to deliver power to IOUs. The contract information includes the capacity, energy, timing, and pricing terms of the contracts.
B) Expired Power Purchase Agreements (PPAs)	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date.</p> <p>Other terms confidential for three years from date contract states</p>	Terminated CCA-IOU Power Purchase Agreements under which power is no longer delivered.

EXHIBIT 1
Appendix 2A to D.06-06-066-CCA Matrix

Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Community Choice Aggregator (CCA) Data		
Item	Public/Confidential Treatment	Explanation of Item
	deliveries to begin; or until one year following expiration, whichever comes first.	
C) Bilateral contracts	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date.</p> <p>Other terms confidential for three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.</p>	Includes contracts of greater and fewer than 5 years in duration.
∅ Recorded (Historical) Data and Information - Electric		
A) Market purchases of energy and capacity	Public after data are one year old.	

EXHIBIT 2
Decision 06-06-066
Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs

Conclusions of Law

15. The confidentiality rules applicable to IOUs, ~~and~~ ESPs and CCAs need not be identical.

22. It is reasonable to adopt the IOU Matrix, ~~and~~ ESP Matrix, and CCA Matrix. We balance the need for open decision making and meaningful public participation with the legitimate needs of parties that come before us for confidential treatment of their data as allowed by law.

23. There may be differences between parties that justify different substantive treatment of data. No type of entity (e.g., IOU, ~~or~~ ESP, or CCA) shall receive greater confidentiality for its data merely because it is such an entity.

Ordering Paragraphs

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

2. We adopt the confidentiality conclusions set forth in the IOU Matrix, ESP Matrix and CCA Matrix attached hereto as Appendices 1, 2, and 2A2 (collectively Matrix, unless otherwise stated). Where a party seeks confidentiality protection for data contained in the Matrix, its burden shall be to prove that the data match the Matrix category. Once it does so, it is entitled to the protection the Matrix provides for that category. The submitting party must file a motion in accordance with Law and Motion Resolution ALJ-164 or any successor Rule, accompanied with any proposed designation of confidentiality, proving:

- 1.) That the material it is submitting constitutes a particular type of data listed in the Matrix,
- 2.) Which category or categories in the Matrix the data correspond to,

EXHIBIT 2
Decision 06-06-066

Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs

- 3.) That it is complying with the limitations on confidentiality specified in the Matrix for that type of data,
- 4.) That the information is not already public, and
- 5.) That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

11. Intervenor groups that are non-market participants shall not be precluded from access to any ESP or IOU data as long as they agree to a protective order or confidentiality agreement where there is a need to protect the data. CCAs will make data available in accordance with the California Public Records Act.

13. With this decision, we commence Phase Two of this proceeding. Respondents shall, and other parties may, file and serve comment on whether it is appropriate for us to develop the following requirements within 30 days of Commission adoption of this decision:

- 1.) A motion that simply asserts, without explanation, that the data contain trade secrets or “market sensitive” information will be denied as incomplete.
- 2.) A party whose motion has been denied for violation of item 1 that refiles the motion in substantively the same form may be subject to penalties pursuant to § 2107 at the discretion of the Assigned Commissioner, Assigned Administrative Law Judge (ALJ) or Law and Motion ALJ.
- 3.) A party seeking confidentiality treatment shall provide in its motion, in text or table form, the following information:
 - a. Legal basis for asserting confidentiality (*e.g.*, § 454.5 (g), trade secret, privilege);
 - b. If covered by the IOU, ~~or~~ ESP, or CCA Matrix in R.05-06-040, the category/ies into which the data fall, with an explanation of how the data match the category/ies in the Matrix.;
 - c. Discussion of why the data should be kept under seal;

EXHIBIT 2

Decision 06-06-066

Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs

- d. Identification of appropriate procedures short of submitting entire documents under seal or in redacted form, such as partial sealing of documents; partial redaction; aggregation of data to mask individualized, sensitive information; delayed information release (after documents are no longer market sensitive); restriction on personnel with access to documents; use of averages, percentages or annualization of data instead of monthly or hourly data; and issuance of guidelines for parties to follow in producing redacted information (*e.g.*, leaving headings in documents; limiting redactions to figures only; and leaving sufficient information in documents to give other parties notice of what has been redacted).
- 4.) Parties may not assume that their motions have been granted if the Assigned Commissioner, Assigned ALJ or Law and Motion ALJ do not act on them. The onus shall be on parties to follow up with the Assigned Commissioner, ALJ or Law and Motion ALJ to seek a ruling, if one is not issued within 60 days of filing of the motion.