



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

FILED

01/19/24

04:59 PM

R2310011

Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Reforms and Refinements, and Establish Forward Resource Adequacy Procurement Obligations.

R.23-10-011

**MOTION OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION
FOR LEAVE TO FILE UNDER SEAL THE CONFIDENTIAL
INFORMATION IN APPENDICES B, C, AND D TO COMMENTS ON
ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

Evelyn Kahl,
General Counsel and Director of Policy
Leanne Bober,
Senior Counsel

CALIFORNIA COMMUNITY CHOICE
ASSOCIATION
One Concord Center
2300 Clayton Road, Suite 1150
Concord, CA 94520
Telephone: (510) 980-9459
E-mail: regulatory@cal-cca.org

January 19, 2024

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

Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Reforms and Refinements, and Establish Forward Resource Adequacy Procurement Obligations.

R.23-10-011

**MOTION OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION
FOR LEAVE TO FILE UNDER SEAL THE CONFIDENTIAL
INFORMATION IN APPENDICES B, C, AND D TO COMMENTS ON
ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

Pursuant to Rule 11.4 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure, General Order 66-D, and Commission decisions regarding filing confidential information under seal,¹ California Community Choice Association² (CalCCA) submits this motion for leave to file under seal the confidential information in Appendices B, C, and D to CalCCA's Comments on Assigned Commissioner's Scoping Memo and Ruling (Comments). CalCCA's Comments are being filed concurrently with this Motion. Attachment A

¹ See Decision (D.) 06-06-066, *Interim Opinion Implementing Senate Bill No. 1488, Relating to Confidentiality of Electric Procurement Data Submitted to the Commission*, Rulemaking (R.) 05-06-040 (June 30, 2005), as modified by D.07-05-032, D.08-04-023, D.20-07-005, and D.21-11-029; see D.20-07-005, *Decision Granting in Part Petition to Modify Decision 06-06-066*, R.05-06-040 (July 16, 2020) (ordering CCAs to provide confidential information to the Commission and to non-market participants pursuant to the procedures in D.06-06-066 and related decisions, ordering the application of the electric service provider (ESP) matrix to CCAs, and finding that CalCCA is permitted to seek confidential treatment of data on behalf of CCAs).

² California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Ava Community Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, Energy For Palmdale's Independent Choice, Lancaster Energy, Marin Clean Energy, Orange County Power Authority, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

to this Motion includes a table setting forth the basis upon which CalCCA seeks confidential treatment. Attachment B is the Verification of Evelyn Kahl, General Counsel and Director of Policy, attesting to the information included in this Motion. Attachment C is a Proposed Order for the Commission as required by Rule 11.4. The public redacted version of the Comments, with Appendices, has been filed and served to the service list concurrently with this motion.

The Appendices for which CalCCA seeks confidential treatment are declarations from staff of CalCCA's members, including: (1) Appendix B, Declaration of Matthew Langer (Clean Power Alliance), (2) Appendix C, Declaration of Kelly Morris (San Jose Clean Energy), and (3) Appendix D, Declaration of Deb Emerson (Sonoma Clean Power) (collectively, the Confidential Declarations). Discussed in the Confidential Declarations are each CCA's recent experience in the Resource Adequacy (RA) market and include economic, commercially sensitive, RA supply and price information such as identification of bids between market participants, prices seen in the RA market, and prices agreed to with counterparties. This information is deemed confidential pursuant to the Commission's orders on confidentiality, as demonstrated in Attachment A, and was provided to CalCCA under confidentiality agreements to support the Comments. CalCCA is bound by these agreements to protect the confidentiality of redacted information provided in the Confidential Declarations. CalCCA's obligations include maintaining the confidentiality of each CCA's data with the public and among other CalCCA members.

The Commission has adopted procedures governing the submission of information with a claim of confidentiality. Under these procedures, a party must file a motion in the docket of a formal proceeding to request confidential treatment. Pursuant to the requirements set forth in D.06-06-066, the movant is required to establish:

- (1) That the material submitted constitutes a particular type of data listed in the Matrix established by D.06-06-066;³
- (2) Which category or categories to which the Matrix the data correspond;
- (3) That the movant 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.⁴

In addition, a party may seek confidential treatment of data not included in the Matrix by filing a motion pursuant to Resolution ALJ-164 or any successor Rule.⁵

Attachment A to this Motion provides a table identifying the data for which CalCCA is seeking confidential treatment. The table: (1) describes the material for which CalCCA seeks confidential treatment; (2) states whether CalCCA seeks confidentiality treatment pursuant to the ESP/CCA Matrix (and the category or categories in the Matrix for which the data correspond), and/or other authority; (3) explains CalCCA's justification for confidential treatment; and (4) states the length of time the data is to be kept confidential. As set forth in the table, certain information redacted in the Confidential Declarations for which CalCCA seeks confidential treatment constitutes supply and/or bilateral contract pricing information as identified in the ESP/CCA Matrix and is presumed confidential.

In addition, under the Public Records Act, Government Code § 7922,⁶ records otherwise subject to disclosure by CCAs as public agencies can be withheld if an agency can demonstrate that such records are otherwise exempt, or if on the facts of a particular case the public interest of

³ As set forth in note 1 above, CCAs are required to use the ESP matrix provided in D.06-06-066.

⁴ D.06-06-066, at 80, Ordering Paragraph (¶) 2.

⁵ *Id.*, ¶ 3.

⁶ Cal. Govt. Code § 7922 recodified former Cal. Govt. Code § 6255(a) as of January 1, 2023.

withholding the records clearly outweighs the public interest served by disclosure. With respect to certain of the redacted information as noted in Attachment A, the public interest served by disclosing is clearly outweighed by the public interest in withholding such information from disclosure, given the sensitivity of the information and the potential harm that will be caused by its disclosure. Certain of the information for which CalCCA seeks confidential treatment, if released, could place CalCCA members at a competitive disadvantage vis-à-vis other market participants. In addition, disclosure of certain price information redacted in the Confidential Declarations could potentially create distortions in the RA capacity markets, and severely compromise members' abilities in procuring RA on terms favorable to their ratepayers.

By this motion, CalCCA is representing that (1) CalCCA is complying with the applicable limitations on confidentiality, (2) the information is not already public to CalCCA's knowledge, and (3) the data cannot be aggregated, redacted, summarized, masked, or otherwise protected in a way that allows partial disclosure.

I. CONCLUSION

For all the foregoing reasons, CalCCA requests that the information identified in the attached table be treated as confidential and not publicly disclosed. CalCCA therefore requests an order for leave to file the confidential information under seal.

Respectfully submitted,



Evelyn Kahl,
General Counsel and Director of Policy
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION

January 19, 2024

**ATTACHMENT A
TO
MOTION OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION
FOR LEAVE TO FILE UNDER SEAL THE CONFIDENTIAL
INFORMATION IN APPENDICES B, C, AND D TO COMMENTS ON
ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

Redaction Reference	Authority for Confidentiality Request	Justification for Confidential Treatment	Length of Time Data to Be Kept Confidential
Matthew Langer Declaration (Appendix B)			
Numerical values in paragraph 12 on page 4	ESP/CCA Matrix, IV(C): Bilateral Contracts Commission General Order 66-D Government Code § 7922	<p>Information relates to prices observed by Clean Power Alliance (CPA). Some of these prices are from executed bilateral contracts and are confidential under section IV(C) of the ESP/CCA confidentiality matrix adopted in D.06-06-066, as modified by D.20-07-005, which requires the following information to remain public:</p> <p style="padding-left: 40px;">Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date.</p> <p>Section IV(C) does allow confidentiality of:</p> <p style="padding-left: 40px;">Other terms for three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.</p> <p>Some of the prices are from Broker quotes for which CPA does not have authorization from the Broker to release the price. In this case, revealing the levels of pricing for RA capacity will place buyers at a competitive disadvantage, and is against the public interest in a functional and fair RA market, both which outweigh any public interest in disclosure of the pricing under the test required for exemption of disclosure by public agencies such as CCAs under Government Code § 7922.</p>	Three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.
Kelly Morris Declaration (Appendix C)			
Numerical values and text in paragraph 4 on page 2	ESP/CCA Matrix, IV(C): Bilateral Contracts Commission General Order 66-D Government Code § 7922	<p>Information relates to prices observed by San Jose Clean Energy (SJCE). Some of these prices are from executed bilateral contracts and are confidential under section IV(C) of the ESP/CCA confidentiality matrix adopted in D.06-06-066, as modified by D.20-07-005, which requires the following information to remain public:</p> <p style="padding-left: 40px;">Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date.</p> <p>Section IV(C) does allow confidentiality of:</p> <p style="padding-left: 40px;">Other terms for three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.</p> <p>Some of these prices come from RFO solicitations or from Broker offers/quotes. In this case, revealing the levels of pricing for RA capacity will place buyers at a competitive disadvantage, and is against the public interest in a functional and fair RA market, both which outweigh any</p>	Three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.

		public interest in disclosure of the pricing under the test required for exemption of disclosure by public agencies such as CCAs under Government Code § 7922.	
Numerical values and text in paragraph 8 on page 3	ESP/CCA Matrix, IV(C): Bilateral Contracts Commission General Order 66-D Government Code §7922	Information relates to SJCE’s spend on bilateral contracts for RA and are confidential under Section IV(C) of the ESP/CCA confidentiality matrix adopted in D.06-06-066, as modified by D.20-07-005, which requires the following information to remain public: Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date. Section IV (C) does allow confidentiality of: Other terms for three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first. The redacted information is the cumulative impact of these contracts on total costs to SJCE’s customers and if revealed to the market would place SJCE at an unfair competitive disadvantage. In this case, revealing the increase in total cost of RA capacity will place buyers at a competitive disadvantage, and is against the public interest in a functional and fair RA market, both which outweigh any public interest in disclosure of the pricing under the test required for exemption of disclosure by public agencies such as CCAs under Government Code § 7922.	Three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.
Dates in paragraph 10 on page 4	ESP/CCA Matrix, II(B): RA Supply Data (both year ahead and month ahead) Commission General Order 66-D Government Code § 7922	This narrative provides market-sensitive RA supply information: <ul style="list-style-type: none"> • Capacity under contract (MW) • Capacity deficiencies (MW) • Confidential information regarding SJCE’s RA procurement practices. This information constitutes RA “Supply Data,” and as such is confidential under Item II(B). In addition, the Commission has established that the public interest in preserving a functional RA market by keeping information confidential that could expose the open RA position of load serving entities outweighs any minimal public interest in making this information public. ⁷ Here, disclosure of	Three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.

⁷ See, e.g., R.17-09-020, *Administrative Law Judge’s Ruling Granting the California Community Choice Association’s Request to Submit Information Under Seal* (May 18, 2018); R.16-02-007, *Joint Ruling of Assigned Commissioner and Administrative Law Judge Granting 29 Motions to File Under Seal, Seeking Comment on Future Confidentiality Treatment, and Confirming No Evidentiary Hearings Will Be Held on Individual Integrated Resource Plans* (Oct. 5, 2018), at 7; R.16-02-007, *Administrative Law Judge’s Ruling Finalizing Load Forecasts and Greenhouse Gas Benchmarks for Individual 2020 Integrated Resource Plan Filings and Assigning Procurement Obligations Pursuant to Decision 19-11-016* (Apr. 15, 2020), at 8-9 (affirming withholding similar information).

		the information contained in Appendix C would provide valuable market sensitive information to market participants, could damage SJCE’s future contract negotiations, and create distortions to the resource adequacy market.	
Numerical value in paragraph 11 on page 5	ESP/CCA Matrix, II(B): RA Supply Data (both year ahead and month ahead) Commission General Order 66-D Government Code § 7922	This narrative provides market-sensitive RA supply information: <ul style="list-style-type: none">• Capacity under contract (percentage)• Confidential information regarding SJCE’s RA procurement practices. This information constitutes RA “Supply Data,” and as such is confidential under Item II(B). In addition, the Commission has established that the public interest in preserving a functional RA market by keeping information confidential that could expose the open RA position of load serving entities outweighs any minimal public interest in making this information public. ⁸ Here, disclosure of the information contained in Appendix C would provide valuable market sensitive information to the market.	Three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.
Deb Emerson Declaration (Appendix D)			
Numerical values and text in paragraph 11 on page 4	ESP/CCA Matrix, IV(C): Bilateral Contracts	Information relates to prices paid on bilateral contracts and are confidential under Section IV(C) of the ESP/CCA confidentiality matrix adopted in D.06-06-066, as modified by D.20-07-005, which requires the following information to remain public: Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date. Section IV (C) does allow confidentiality of: Other terms confidential for three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first. As the prices paid on bilateral contracts fall under the umbrella of “other terms” (i.e., terms for which public disclosure is not required), such prices should remain confidential.	Three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.
Numerical values and text in paragraph 13 on page 4	ESP/CCA Matrix, IV(C): Bilateral Contracts	Information relates to prices paid on bilateral contracts and are confidential under Section IV(C) of the ESP/CCA confidentiality matrix adopted in D.06-06-066, as modified by D.20-07-005, which requires the following information to remain public Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date.	Three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.

⁸ *Id.*

		<p>Section IV (C) does allow confidentiality of:</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> <p>As the prices paid on bilateral contracts fall under the umbrella of “other terms” (i.e., terms for which public disclosure is not required), such prices should remain confidential.</p>	
--	--	---	--

**ATTACHMENT B
TO
MOTION OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION
FOR LEAVE TO FILE UNDER SEAL THE CONFIDENTIAL
INFORMATION IN APPENDICES B, C, AND D TO COMMENTS ON
ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

VERIFICATION OF EVELYN KAHL

VERIFICATION OF EVELYN KAHL

I am the General Counsel and Director Policy of the California Community Choice Association (CalCCA). I have been delegated authority to sign this declaration by CalCCA’s Chief Executive Officer, Beth Vaughan. The statements in the foregoing **MOTION OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION FOR LEAVE TO FILE UNDER SEAL THE CONFIDENTIAL INFORMATION IN APPENDICES B, C, AND D TO THE COMMENTS ON ASSIGNED COMMISSIONER’S SCOPING MEMO AND RULING** are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, I believe them to be true.

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

Executed on January 19, 2024, at San Francisco, California.

Evelyn Kahl,



General Counsel and Director of Policy
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION
One Concord Center
2300 Clayton Road, Suite 1150
Concord, CA 94520
Telephone: (510) 980-9459
E-mail: regulatory@cal-cca.org

**ATTACHMENT C
TO
MOTION OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION FOR
LEAVE TO FILE UNDER SEAL THE CONFIDENTIAL INFORMATION IN
APPENDICES B, C, AND D TO COMMENTS ON ASSIGNED
COMMISSIONER'S SCOPING MEMO AND RULING**

PROPOSED RULING

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

Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Reforms and Refinements, and Establish Forward Resource Adequacy Procurement Obligations.

R.23-10-011

[PROPOSED] RULING

The California Public Utilities Commission (Commission) has considered the motion of the California Community Choice Association (CalCCA), filed January 19, 2024, for confidential treatment of certain data and information contained in its **COMMENTS ON ASSIGNED COMMISSIONER’S SCOPING MEMO AND RULING IN RULEMAKING 23-10-011**, filed January 19, 2024. This data and information are of the type addressed in the Appendix Matrices to Decision (D.) 06-06-066, as applied to CCAs in D.20-07-005. Good cause showing, the Commission rules as follows:

(1) CalCCA’s Motion is granted. The protected materials in the confidential, unredacted version of CalCCA’s **COMMENTS ON ASSIGNED COMMISSIONER’S SCOPING MEMO AND RULING IN RULEMAKING 23-10-011** are described in the table attached to the Motion.

(2) The confidential, unredacted version of this information shall not be made accessible or disclosed to anyone other than the Commission and its staff except on the further order or ruling of the Commission, the Assigned Commissioner, the Assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

Dated _____, 2024 at San Francisco, California.

Administrative Law Judge