

**DOCKETED**

<b>Docket Number:</b>	19-PSDP-01
<b>Project Title:</b>	Power Source Disclosure Program - 2018
<b>TN #:</b>	229143
<b>Document Title:</b>	Response Letter to Clean Power Alliance Regarding Application for Confidential Designation
<b>Description:</b>	N/A
<b>Filer:</b>	Darlene Burgess
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
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<b>Docketed Date:</b>	7/30/2019



July 25, 2019

Mr. Ted Bardacke  
Clean Power Alliance  
555 5<sup>th</sup> Street, 35<sup>th</sup> Floor  
Los Angeles, CA 90013

**Re: Application for Confidential Designation for Power Source  
Disclosure Annual Report, Docket No. 19-PSDP-01**

Dear Mr. Bardacke:

The Energy Commission is in receipt of Clean Power Alliance's (Applicant) Application for Confidentiality for specified data contained in the 2018 Annual Reports under the Power Source Disclosure program (PSDP). Specifically, the Applicant seeks confidentiality for the following data:

- 1) PSD Schedule 1 - Gross MWh Procured, MWh Resold or Self-Consumed, and Net MWh Procured data (Columns N, O and P); Total Net Purchases (Cell O28); and Total Retail Sales (Cell O31).
- 2) PSD Schedule 2 - Renewable and Non-renewable Specific Net Purchases (MWh) (Cells C13 through C24); Unspecified Power Net Purchases (Cell C26); Total Net Purchases (Cell C28), and Total Retail Sales (Cell C30).

The application notes that the data is commercially sensitive and disclosure of the Applicant's 2018 retail sales or procurement data could, in combination with certain renewable portfolio standard-related procurement data the Applicant is required to report to the California Public Utilities Commission that is not confidential, be used to derive the Applicant's renewable portfolio standard "net short" position. The application states that this information could in turn be used to the company's business disadvantage by wholesale suppliers in commercial negotiations with the Applicant for the purchase and sale of renewable portfolio standard-eligible electricity products, with no offsetting public interest benefit from public disclosure of said data.

The application states that confidential information contained in the annual reports may be disclosed if it is aggregated with the same type of data reported by other energy service providers.

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A properly filed Application for Confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), “. . . if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [Energy] Commission to keep the record confidential.” The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.)

California courts have traditionally used the following definition of trade secret:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207, citing the Restatement of Torts, vol. 4, § 757, comment b, p.5.)

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, an application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to an applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application addresses these elements as disclosure of the Applicant's retail sales or procurement data could disadvantage the Applicant in negotiating for upcoming purchases of renewable energy. According to the application, this disadvantage could result in higher costs for customers and the potential loss of customers. Procurement data has been kept confidential and has not been publicly disclosed.

Confidentiality is sought for procurement information reported as megawatt hours related to retail energy sales information and not the percent data, which is publicly disclosed on power content labels. The Applicant has made a reasonable claim that the law allows the California Energy Commission to keep all reported megawatt hours contained in the annual reports from public disclosure.

The Applicant requests that the information be kept confidential until December 31, 2019, which represents the amount of time the same or substantially similar data is being considered confidential by the California Public Utilities

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Commission. The information may be released if applicant-specific information is aggregated with information from all other Energy Service Providers on a statewide level.

For these reasons, the request for confidential designation for the reported megawatt hours contained in the annual reports is granted until December 31, 2019.

For future PSDP annual reports that are substantially similar, the Applicant may follow the simplified process set forth in the California Code of Regulations, title 20, section 2505(a)(4).

If you have any questions concerning this matter, please contact Jared Babula, senior attorney, at [jared.babula@energy.ca.gov](mailto:jared.babula@energy.ca.gov) or (916) 651-1462.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal flourish extending to the right.

Drew Bohan  
Executive Director