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July 25, 2019

Mr. Jason Armenta
Calpine PowerAmerica-CA, LLC
717 Texas Avenue #1000
Houston, TX 77002

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

Dear Mr. Armenta:

The Energy Commission is in receipt of Calpine PowerAmerica-CA, LLC'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 – Cells N10, P10, O36 and O39.
- 2) PSD Schedule 2 – cells C26 - D26, C28, C30 and cells D13 – D24.

The application states that if the information is not protected from disclosure, it can be used to calculate the Applicant's total retail sales, which would allow sellers of power to know how much capacity the Applicant needs. Sellers of power could then use this information to manipulate the market, resulting in the Applicant and its retail customers paying more for power.

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.

The application is also seeking confidentiality for the percent of retail sales in Schedule 2, column D. The granting of confidentiality for percent data would be inconsistent with confidentiality designations in prior years as well as with confidentiality requests from other entities. In addition, Power Content Labels containing the percent data are required to be disclosed by utilities to their customers prior to the Applicant's requested confidentiality term of December 31,

2020. Therefore, to ensure consistency and compliance with the PSDP, the percent data in Schedule 2, column D cannot be designated as confidential.

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.

While the Applicant requested confidentiality for the percent data in Schedule 2, column D, this data cannot be designated as confidential. However, 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. This would include the MWh values listed in Schedule 2, column C.

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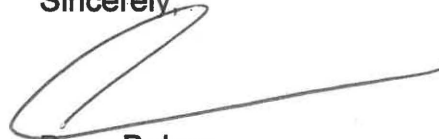
and granted to other entities under the PSDP, which is until December 31, 2019. A term ending December 31, 2019, or one year from the end of the reporting period, is the appropriate time to keep confidential all reported megawatt hours contained in the annual reports because it is consistent with confidentiality protection of the same or substantially similar data held by the California Public Utilities Commission.

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, or (916) 651-1462.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal stroke extending to the right.

Drew Bohan
Executive Director