

**DOCKETED**

<b>Docket Number:</b>	20-PSDP-01
<b>Project Title:</b>	Power Source Disclosure Program - 2019
<b>TN #:</b>	234379
<b>Document Title:</b>	Calpine PowerAmerica-CA, LLC Application for Confidential Designation and Cover Letter
<b>Description:</b>	This document supersedes TN 234077
<b>Filer:</b>	Judy Pau
<b>Organization:</b>	Calpine Power-America-CA, LLC
<b>Submitter Role:</b>	Applicant
<b>Submission Date:</b>	8/19/2020 5:13:39 PM
<b>Docketed Date:</b>	8/20/2020

August 19, 2020

Mr. Drew Bohan  
Executive Director  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

**Subject: Docket 20-PSDP-01 - Application of Calpine PowerAmerica-CA, LLC for Confidential Designation of Information Contained in the Annual Report to the California Energy Commission: Power Source Disclosure Program for Year Ending 12/31/2019**

Dear Mr. Bohan,

Calpine PowerAmerica – CA, LLC (“CPA”) requests that certain information included as part of its Revised Proposed Annual Report to the California Energy Commission: Power Source Disclosure Program (“PSDP Report”) submitted on August 19, 2020, be designated confidential pursuant to Title 20 Cal. Code. Regs. § 2505 *et seq.* This PSDP Report replaces the version previously submitted.

In support of its application for confidentiality designation, CPA provides the following information:

**Contact Information**

Applicant: Calpine PowerAmerica-CA, LLC  
Address: 717 Texas Avenue, # 1000  
Houston, TX 77002

All correspondence regarding this filing should be sent by letter and transmitted via facsimile or electronically to the attention of:

Jason Armenta  
Sr Director, Power Trading  
Calpine Corporation  
717 Texas Avenue Suite 1000  
Houston, Texas 77002  
Tel: 713-830-8362  
Email: jarmenta@calpine.com

Rosemary Antonopoulos  
VP & Assistant General Counsel  
Calpine Corporation  
3003 Oak Road, Suite 400  
Walnut Creek, CA 94597  
Tel: (925) 557-2283  
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### **Description of Confidential Information**

CPA seeks confidential treatment of certain designated portions of its Report that have been redacted in the public version of the PSDP Report. The confidential portions of the Report relate to CPA's total retail sales.

### **Specific Indication of Those Parts of the Record to Be Kept Confidential**

CPA requests confidential treatment of cells L7 and L9 in the PSDP Schedule 1 tab of the PSDP Report. This information has been redacted in the public version of the PSDP Report.

CPA requests confidential treatment of cells B24 – B25, C13 – C25, C27, and C29 in the PSDP Schedule 2 tab of the PSDP Report. This information has been redacted in the public version of the PSDP Report.

### **Length of Time the Information Should Be Kept Confidential**

CPA requests that the information regarding CPA's total retail sales be kept confidential indefinitely, or until such information would not reveal customer specific information. CPA only serves two customers with a consistent load; thus customer-specific consumption data would be revealed if the requested information was not afforded confidential treatment.

### **Provisions of Law Allowing the Commission to Keep the Documentation Confidential**

As discussed above, the designated information contains customer-specific information. Public dissemination of private, customer-specific data would not serve the public interest.<sup>1</sup>

The designated information is also market sensitive information that constitutes a trade secret under California law. A trade secret is "information . . . that: (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."<sup>2</sup> To determine whether certain information is a trade secret, one must evaluate whether the matter sought to be protected is information (1) which is valuable because it is unknown to others, and (2) which the owner has attempted to keep secret.<sup>3</sup> If it is not protected from disclosure, information which can be used to calculate CPA's total retail sales would allow sellers of power to know how much capacity CPA needs. Sellers of power could then use this information to "manipulate the market," resulting in CPA and its retail customers paying more for power.<sup>4</sup> For these reasons, CPA has taken steps to maintain the secrecy of this information. Under the California Public Records Act ("PRA"), Gov't Code § 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed. Evidence Code § 1060 *et seq.* provides a privilege for trade secrets.<sup>5</sup>

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<sup>1</sup> See Cal. Const. art. I, § 1.

<sup>2</sup> Civ. Code § 3426.1(d).

<sup>3</sup> Whyte v. Schlage Lock Co. (2002) 101 Cal.App.4th 1443, 1454.

<sup>4</sup> See CPUC Decision 08-04-023, mimeo at 13-14.

<sup>5</sup> See Evidence Code § 1061(a)(1) (citing to Civil Code § 3426.1); See also Cal. Civ. Code § 3426.1.

Gov't Code § 6255 also permits public agencies to withhold any public record where “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” These provisions govern the CEC's treatment of the designated information in relation to a PRA request. As discussed above, the disclosure of information which can be used to calculate CPA’s total retail sales could lead to increased costs to CPA and its customers and a release of customer-specific data. This potential harm is not outweighed by any potential public interest in the information being disclosed.

### **Aggregation and Masking of Confidential Information**

The total retail sales information which CPA seeks to protect from disclosure has been redacted as minimally as possible in the “public” version of the Report. This information, however, may be disclosed if it is aggregated with the total retail sales of all other Energy Service Providers or Load Serving Entities, and steps are taken to ensure CPA specific retail sales information cannot be ascertained from the aggregated information.

### **The Submitted Information is Presently Confidential**

CPA does not publicly disclose its total retail sales and related information which can be used to calculate CPA’s total retail sales. This type of information is periodically provided to the California Public Utilities Commission (“CPUC”) and is protected from public disclosure by the CPUC.

I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the applicant.

Dated: August 19, 2020

Calpine PowerAmerica-CA, LLC



Jason Armenta  
Sr Director, Power Trading

Attachments



## APPLICATION FOR CONFIDENTIAL DESIGNATION (Title 20 Cal. Code. Regs., § 2505 et seq.)

CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

**All confidential filings:** Individual documents may not exceed 30 MB<sup>1</sup> or be password protected.<sup>2</sup> The application must be a separate document from the confidential materials. The application itself is not confidential and is a public record. The application will be reviewed and acted upon by the Executive Director in consultation with the Chief Counsel of the Energy Commission. (§ 2505, subd. (a))

If you have questions, contact the Docket Unit at (916) 654-5076 or email: [docket@energy.ca.gov](mailto:docket@energy.ca.gov).

**Existing proceedings:** Applications for confidentiality and the confidential documents must be uploaded directly to the Docket Unit through the e-filing system. Paper copies or CDs do not need to be submitted. Links to the e-filing system are provided on most proceeding webpages labeled “**Submit e-filing.**” Alternatively, go to: <http://www.energy.ca.gov/e-filing/index.html>. Registration is necessary the first time documents are uploaded. Once registration is complete, to submit a confidential filing click on **Quick Actions** from the **DASHBOARD** and select **Submit Confidential e-filing** from the dropdown list. The application must be uploaded first followed by one or more confidential files.

**Filings not associated with any proceeding:** Applications for confidentiality and the confidential materials must be submitted directly to the **Docket Unit** in paper form or on a CD, but not by email. Two copies must be submitted, on separate media if electronic, each marked with a descriptive title and “Confidential.” (§ 1208.1)

### TO: Energy Commission Docket Unit

Applicant: Calpine PowerAmerica-CA, LLC (1362)

Address: 717 Texas Ave, # 1000 Houston TX 77002

Phone and E-mail: (713) 570-4798 [cpacc@calpine.com](mailto:cpacc@calpine.com)

Proceeding or Project Name: Power Source Disclosure Program - 2019 Annual Report

Docket Number: 20-PSDP-01

- 1(a). Title, date, and description (including number of pages) of the information or data for which you request confidential designation. **Information or data seeking a designation of confidentiality must be included with this application.**

2019 Power Source Disclosure for Calpine PowerAmerica-CA, LLC dated July 30, 2020 and revised August 19, 2020. Data to be maintained confidentially as detailed in in the application cover letter.

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- 1(b). Specify the part(s) of the information or data for which you request confidential designation.

See attached cover letter for additional information.

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<sup>1</sup> Contact the Docket Unit if you cannot reduce the size of your file.

<sup>2</sup> If you wish to protect the files while in transit, you may combine them in a password-protected .zip file..



**APPLICATION FOR CONFIDENTIAL DESIGNATION**  
**(Title 20 Cal. Code. Regs., § 2505 et seq.)**

CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

2. State and justify the length of time the Energy Commission should keep the information or data confidential.

See attached cover letter for additional information.

3(a). State the provision(s) of the Public Records Act (Gov. Code, § 6250 et seq.) or other law that allows the Energy Commission to keep the information or data confidential, and explain why the provision(s) apply to that material.

See attached cover letter for additional information.

3(b). Discuss the public interest in nondisclosure of the material submitted for a confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

See attached cover letter for additional information.

4. State whether the information or data can be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why.

See attached cover letter for additional information.

5. State how the material is kept confidential by the applicant and whether it has even been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred.

The information for which applicant is seeking confidentiality has not been disclosed publicly and treated as confidential by Applicant.

I certify under penalty of perjury under the laws of the State of California that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the applicant.

Dated: August 19, 2020

Signed: Jason Comenta



**APPLICATION FOR CONFIDENTIAL DESIGNATION**  
**(Title 20 Cal. Code. Regs., § 2505 et seq.)**

CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

Name (print or type): Jason Armenta

Title: (print or type) Senior Director Power Trading

Representing: Calpine PowerAmerica-CA, LLC

Include additional signature blocks if there are multiple partners in the project with shared responsibilities for making the request.