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**APPLICATION FOR CONFIDENTIAL
DESIGNATION (20 CCR SECTION 2505)**

**2021 INTEGRATED ENERGY POLICY REPORT
DOCKET NUMBER 21-IEPR-03**

Applicant: Clean Power Alliance of Southern California (“CPA”)

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1. Identification of the information being submitted, including title, date, size (for example, pages, sheets, megabytes), and docket number

CPA submits its 2021 Electricity Resource Planning Forms S-1, S-2 and S-5, which were adopted by the California Energy Commission (“Energy Commission”) on May 12, 2021.¹ The forms are approximately 157 kilobytes and are concurrently filed with this application. Each form is conspicuously labeled “Confidential” and all data for which CPA seeks confidential designation is highlighted yellow. CPA respectfully requests that the Energy Commission designate the below information confidential.

2. Description of the data for which confidentiality is being requested (for example, particular contract categories, specific narratives, and time periods).

CPA requests that the following parts of Forms S-1, S-2, and S-5 of CPA’s 2021 Electricity Resource Planning Forms be designated as confidential and exempt from public disclosure.

- **Form S-1 Capacity/Energy Requirement Form** – CPA requires confidential treatment of the information contained in the following rows for the time periods specified below.
 - Row 1 Forecast Total Peak Hour 1-in-2 Demand for the years 2020-2023.

¹ On May 12, 2021, the Energy Commission issued a Resolution adopting Forms and Instructions for Electricity Resource Plans.

- Row 5 – Adjusted Peak-Hour Demand: End Use Customer for the years 2020-2023.
 - Row 6 Coincident Adjustment for the years 2020-2023.
 - Row 7 Coincident Peak Hour Demand for the years 2020-2023.
 - Row 8 – Required Planning Reserve Margin for the years 2020-2023.
 - Row 11 – Firm LSE Procurement Requirement for the years 2020- 2023.
 - Row 12 – Forecast Total Energy Demand / Consumption for the years 2020-2023.
 - Row 16 –Adjusted Demand: End-Use Customers for the years 2020- 2023.
 - Row 18 –Firm LSE Procurement Requirements for the years 2020- 2023.
- **Form S-2 – Capacity/Energy Supply Resources Information** – CPA requires confidential treatment of the information contained in the following rows for the time periods specified below.
 - Row 6a – Total Renewable Contract Supply for the years 2020-2030 (capacity only).
 - Rows 6c-6am, 6bd-6bg, 6bn, 6e – Individual Renewable Contract Supply Resources for the years 2020-2030 (capacity only).
 - Row 7a – Total Other Bilateral Contract Supply for the years 2020-2030.
 - Rows 7b-7an – Individual Other Bilateral Contract Supply Resources for the years 2020-2030.
 - Row 9 – Total: Existing and Planned Supply for the years 2020-2023.
 - Row 10 – Firm LSE Procurement Requirement for the years 2020-2023.
 - Row 11 – Net Surplus or (Need) for the years 2020-2023.
 - **Form S-5 – Bilateral Contracts Table** – CPA requires confidential treatment of the information contained in the following columns for the period of three years from the date the contract states deliveries begin or until the year following expiration, whichever comes first.
 - Column E – Unit Contingent

- Column L - Contract / Agreement Products
- Column N – Notes (1); and
- Column O – Notes (2)

3. A clear description of the length of time for which confidentiality is being sought, with an appropriate justification, for each confidential data category request.

For reasons discussed in more detail below, CPA requests that the specified information above be restricted from public disclosure based on either a window of confidentiality looking three years forward, one year back, or the entire forecast for a three-year period. As data becomes one year old, the 1-year window of confidentiality for historical data becomes applicable. Thus, in a 2021 forecast of confidential information for 2021, 2022, and 2023, the data for 2021 should be released in 2022 when it is one year old, the data for 2022 should be released in 2023, and so on.

This methodology is consistent with the California Public Utilities Commission’s (“CPUC’s”) Decision (“D.”) 06-06-066, as modified by D.07-05-032, and its attached Confidentiality Matrix.² The Energy Commission and the CPUC are often charged with overlapping responsibilities. As a result, both commissions undertake endeavors that require them to review similar types of data. Accordingly, the Energy Commission has endeavored to work collaboratively with the CPUC to assure regulatory consistency in areas such as the Energy Commission’s Demand Forecasts and CPA requests that the Energy Commission continue to employ that practice with respect to its disposition of this application.

4. Applicable provisions of the California Public Records Act (Government Code Section 6250 *et seq.*) and/or other laws, for each confidential data category request.

CPA purchases and sells large quantities of electrical energy on behalf of its customers. The marketplace for such purchases and sales is highly competitive. Accordingly, information about the timing and quantity of energy CPA has to sell or needs to purchase to serve its customers is extremely valuable and, if revealed, could place CPA at a competitive disadvantage when purchasing or selling energy. For this reason, CPUC decisions protect such information

² D.06-06-066, as modified by D.07-05-032, Confidentiality Matrix, p. 2, fn. 6.

from public disclosure and dissemination. As noted above, CPA requests the Energy Commission to adopt a methodology that is consistent with the one utilized by the CPUC for maintaining the confidentiality of such information.

The data identified as confidential in this application requires confidential treatment because this information could allow a market participant to calculate CPA's forecasted energy supply needs for the peak of the year, or on an hourly basis. By providing a critical factor used to calculate CPA's "residual net short" position – the amount of energy CPA must procure in the market after meeting its forecasted load with contracted resources – potential suppliers could calculate whether CPA had sufficient resources to meet that demand for the year, or on any particular hour or day. With such information, a supplier could charge CPA a higher price for power or depress the price CPA could obtain for selling power when it had an excess that it desired to sell. Either outcome would ultimately harm CPA's customers.

The California Legislature has enacted statutes to protect confidential information, including the information for which CPA seeks protection here, from public disclosure. Specifically, the Public Records Act, found at Government Code Section 6254(k), establishes that public records subject to privileges established in the California Evidence Code are not required to be disclosed. Evidence Code §1060 shields "trade secrets" from public disclosure. "Trade secrets" include any "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who could obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy."³ Section 25322 of the California Public Resources Code governing the confidentiality of information gathered by the Energy Commission follows the same standard.⁴ Specifically, if the information is exempt from

³ Civil Code §3426.1(d).

⁴ Cal. Pub. Resources Code 25322 § 25322(a)(1)(A) ("The data collection system managed pursuant to Section 25320 shall include the following requirements regarding the confidentiality of the information collected by the commission: (1) Any person required to present information to the commission pursuant to this section may request that specific information be held in confidence. *The commission shall grant the request in any of the following*

disclosure under the California Public Records Act, “[t]he commission shall grant the [confidentiality] request.”⁵ The data for which CPA seeks confidential protection here are trade secrets because they derive value from not being known to the public. In fact, public disclosure of this information would cause electricity prices to materially increase, which would harm customers. Accordingly, CPA makes reasonable efforts to maintain its secrecy.

In addition, CPA seeks protection under Government Code Section 6255 because the public interest in not disclosing the timing and quantity of energy CPA has to sell or needs to purchase to serve its customers is outweighed by the public interest in disclosure. Disclosing this information can materially increase the price of electricity thereby impacting CPA’s customers’ rates and harming CPA customers’ interests.

Although the CPUC’s decisions and the statutes applicable to the CPUC may not be binding on the Energy Commission, as a matter of comity and consistency, the Energy Commission should apply the same level of confidential protection to information provided to it as provided by the CPUC. D.06-06-066 as modified by D.07-05-032 adopted procedures affording confidentiality to investor-owned utilities’ (“IOUs”) procurement data and created a Confidentiality Matrix, which protects certain procurement data as confidential/market sensitive and the length of that protection.⁶

In the 2021 IEPR, CPA seeks protection of information identified by the CPUC as confidential/market sensitive in the Confidentiality Matrix. Attachment 2 contains a table showing how information for which CPA is seeking confidential treatment from the Energy Commission is or can be used to derive a category of data the CPUC has identified as market sensitive. CPA is required to provide similar information to both agencies. Indeed, the information for which CPA is seeking confidential treatment in the IEPR can either be used to calculate or is nearly identical to the information for which CPA receives confidential treatment in the Confidentiality Matrix. Since CPA’s procurement data, in this instance, is similar to the

circumstances: (A) The information is exempt from disclosure under the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.” (emphasis added.)

⁵ *Id.*

⁶ *See also*, Public Utilities Code §454.5(g), which provides that “the [CPUC] shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information. . .”

data presented by the IOUs, CPA's data should be afforded confidential treatment for similar reasons under D.06-06-066.

To maintain consistency between the Energy Commission and CPUC and to avoid nullifying the CPUC's lawful determination that the release of market sensitive information would result in a material increase in electricity prices, the Energy Commission should protect CPA's market sensitive information, just as the CPUC does.⁷ Allowing persons or entities to circumvent the CPUC's confidentiality rules by "agency shopping" and thus obtain access to data that would otherwise be deemed confidential can have the unintended consequence of undermining the public's confidence in the regulatory environment and both agencies.

In summary, public disclosure of the information for which CPA seeks confidential treatment would harm CPA and its customers by revealing its energy needs. Public knowledge of this trade secret information will ultimately lead to CPA's customers being put at a competitive disadvantage when CPA procures or sells energy on their behalf. Accordingly, CPA requests that the Energy Commission grant this market sensitive, trade secret information confidential treatment.

5. A statement attesting a) that the specific records to be withheld from public disclosure are exempt under provisions of the Government Code, or b) that the public interest in non-disclosure of these particular facts clearly outweighs the public interest in disclosure.

The data for which CPA seeks confidential treatment contains information that could allow market participants to calculate CPA's forecasted supply needs, either on an annual peak and energy basis or on an hourly basis. By providing a critical factor in the calculation of CPA's "residual net short" position – the amount of energy CPA needs to procure in the market after meeting its forecasted load with contracted resources – market participants would potentially be able to calculate whether CPA has sufficient resources to meet that demand for the year, or on

⁷ California Public Utilities Code Section 583 provides: "No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor."

any particular hour or day. With such information, a supplier could charge CPA a higher price for power or depress the price CPA could obtain for selling power when it had too much on hand. Either outcome would ultimately harm CPA's customers, who will bear the burden of the higher costs. This information is protected as a trade secret under the Public Records Act, the Public Resources Code, and Public Utilities Code. Accordingly, the CPUC has determined that the benefit of maintaining the confidentiality of this "market sensitive" information outweighs any benefit to be gained from publicly releasing it. All of the data for which CPA seeks protection is "market sensitive" and protected under the CPUC- approved Confidentiality Matrix. In addition, based on the foregoing facts, the public harm of the disclosure, namely the potential impact on CPA customers electricity rates, outweighs the public interest in disclosure of this information.

CPA cannot assign a specific value to the information it seeks to protect. The information for which CPA seeks confidential treatment cannot be easily acquired or duplicated by others. In addition, it would be very costly to CPA's customers (and therefore commercially valuable to its suppliers) if it were publicly disclosed.

- 6. A statement whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required. If the information cannot be disclosed even if aggregated or masked, the application shall justify why it cannot.**

For the reasons stated in response to questions 3 and 4, the information required in the 2021 Electricity Resource Planning Forms S-1, S-2 and S-5, which CPA has identified as confidential, cannot be aggregated or masked to allow for its public disclosure.

- 7. A statement attesting how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.**

Based on information and belief, CPA has not, to the best of its knowledge, previously publicly released the information for which it seeks confidentiality here. Some of the information contained in the referenced forms may have previously been submitted to the CPUC

pursuant to Public Utilities Code Section 583⁸ and other CPUC procedural safeguards to maintain its confidentiality. With respect to the Energy Commission staff, CPA has identified the information as confidential and has followed all Energy Commission procedures to protect the confidentiality of the information. CPA has not, to the best of its knowledge, publicly made this data available in the form required by the Energy Commission.

8. If the record contains information that the applicant has received from another party who has demanded or requested that the applicant maintain the confidentiality of the information, explain the demand or request made by the original party and the reasons expressed by the original party.

The agreements between CPA and their counterparties contain confidentiality provisions that recognize the confidential/market sensitive nature of these requests and therefore, require CPA to maintain the confidentiality of this information to the fullest extent permitted under the law. Any disclosure in violation of these confidentiality provisions would impact the commercial relations between CPA and the counterparties and harm CPA’s reputational interest. This could in turn lead to penalties, damages, defaults, and other potential impacts.

I certify under penalty of perjury that to 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: September 17, 2021

Signed: /s/ Natasha Keefer

Name: Natasha Keefer
Title: Vice President, Power Supply
Company: Clean Power Alliance of Southern California, a Joint Powers Agency

⁸ *Id.*

ATTACHMENT 1

HIGHLIGHTED SUPPLY FORMS S-1, S-2 and S-5

ATTACHMENT 2

**TABLE CORRELATING IEPR CONFIDENTIAL INFORMATION TO
CPUC D.06-06-066 MARKET SENSITIVE DATA MATRIX**

**TABLE CORRELATING IEPR CONFIDENTIAL INFORMATION TO
CPUC D.06-06-066 MARKET SENSITIVE DATA MATRIX**

Description of the data for which CPA requires confidential treatment from the Energy Commission	Portion of the Matrix to D.06-06-066 Granting Confidentiality	Length of Time Matrix Grants Confidentiality	CPA Previously Granted Confidentiality by Energy Commission
<p>Form S1 - Capacity/Energy Requirement Form</p> <ul style="list-style-type: none"> • Row 1 Forecast Total Peak Hour 1-in-2 Demand • Row 5 – Adjusted Peak-Hour Demand: End Use Customer • Row 7 Coincident Peak Hour Demand • Row 8 – Required Planning Reserve Margin • Row 11 – Firm LSE Procurement Requirement 	<p>X.A. Bundled customer total historical peak demand (MW)</p> <p>X.C. Bundled customer total historical peak demand (MW)</p>	<p>X.A Public after data are one year old</p> <p>X.C Front three years of forecast data confidential</p>	<p>Not applicable</p>
<p>Form S1 - Capacity/Energy Requirement Form</p> <ul style="list-style-type: none"> • Row 12 – Forecast Total Energy Demand / Consumption • Row 16 –Adjusted Demand: End-Use Customers • Row 18 –Firm LSE Procurement Requirements 	<p>V.C. LSE Total Energy Forecast – Bundled Customer (MWh)</p>	<p>V.C Front three years of forecast data confidential</p>	<p>Not applicable</p>

<p>Form S-2 – Capacity/Energy Supply Resources Form</p> <ul style="list-style-type: none"> • Row 6a – Total Renewable Contract Supply • Rows 6c-6am, 6bd-6bg, 6bn, 6e – Individual Renewable Contract Supply Resources • Row 7a – Total Other Bilateral Contract Supply • Rows 7b-7an – Individual Other Bilateral Contract Supply Resources 	<p>IV.F. Forecast of Post-1/1/2003 (“New World”) Bilateral Contracts</p> <p>VII.B. Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS).</p> <p>VII. G Renewable Resource Contracts under RPS program – Contracts without SEPs</p>	<p>IV.F. Individual contract information confidential for three years, or until one year following expiration, whichever comes first.</p> <p>Aggregated annual capacity and energy data from all contracts public.</p> <p>VII.B. and G. Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date.</p> <p>VII.B Other terms confidential for three years from date contract states deliveries to begin; or until one year following expiration, whichever comes first.</p>	<p>Not applicable</p>
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		VII.G Other terms confidential for three years, or until one year following expiration, whichever comes first.	
<p>Form S-2 – Capacity/Energy Supply Resources Form</p> <ul style="list-style-type: none"> • Row 9 – Total: Existing and Planned Supply • Row 10 – Firm LSE Procurement Requirement • Row 11 – Net Surplus or (Need) 	VI.B. Utility Bundled Net Open (Long or Short Position for Energy (MWh))	Front three years of forecast data confidential	Not applicable
<p>Form S-5 – Bilateral Contracts Table</p> <ul style="list-style-type: none"> • Column E – Unit Contingent • Column L – Contract / Agreement Products • Column N – Notes (1); and • Column O – Notes (2) 	<p>VII.B. Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS).</p> <p>VII. G Renewable Resource Contracts under RPS program – Contracts without SEPs</p>	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date.</p> <p>VII.B Other terms confidential for three years from date contract states deliveries to begin; or until one year</p>	Not applicable

		following expiration, whichever comes first. VII.G Other terms confidential for three years, or until one year following expiration, whichever comes first.	
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