

**Orange County Power Authority**  
**Policy Number 022: Policy on Member Access to Confidential Information**

**Background and Purpose**

Orange County Power Authority (OCPA) has access to sensitive information that is generated by OCPA or becomes available to OCPA in connection with its operation of a community choice aggregation program that serves energy for the benefit of the electrical utility customers within the jurisdictional boundaries of each party to the OCPA Joint Powers Agreement (Member).

Some of this sensitive information is confidential information that is protected from disclosure under applicable law. Examples include, without limitation: (i) “Customer Information” that is protected under State law as reflected in OCPA’s Policy Number 003 (Customer Information Confidentiality Policy); (ii) confidential information concerning employees of OCPA that is protected under State law; (iii) “market sensitive information” concerning energy markets that is contained in power procurement contracts, bids and negotiation documents; and (iv) proprietary information generated by OCPA concerning current and future electrical load profiles, energy and pricing forecasts and regulatory documents that are filed under seal. “Market sensitive information” includes information concerning the following: (i) price, (ii) quantity, (iii) credit terms and collateral, (iv) the location of energy generation resources that are being acquired, and (v) projections of energy procurement and use.

For the purposes of this Policy, information that is referred to herein as “confidential” is information that would be protected from disclosure pursuant to an exemption under the California Public Records Act (Cal. Gov. Code § 7920.000, *et seq.*) or other applicable law.

The protection of confidential information is vital to the operation of OCPA and the failure of OCPA to protect such information can result in legal and regulatory liability. The failure of OCPA to maintain the confidentiality of market sensitive information and other proprietary information generated by OCPA can further impair the ability of OCPA to procure energy in the market on the best terms available, undermining the key objective of OCPA to provide energy, and particularly renewable energy, to its customers at competitive rates.

The Board of Directors of OCPA has access to confidential information so that the Board can carry out its oversight of OCPA operations, although the form of access may be restricted to viewing such information through a secure portal. As a general rule, the policy of OCPA has been that the access to confidential information afforded to each Director as the appointed representative of a Member of OCPA is sufficient to protect the interests of the Members. With each extension of access beyond the Board, OCPA staff and necessary professional advisors, the risk of unauthorized disclosure, security breaches and legal liability to OCPA and its operations increases.

Members of OCPA have asked OCPA to expand access to confidential information in a safe and secure manner that allows the Members to evaluate various aspects of OCPA operations and the potential liability of Members with respect to those operations and, in order to accommodate such requests, OCPA, in coordination with its General Counsel, has determined that certain confidential information may be shared with Members pursuant to Government Code section 7921.505(c)(5), which provides that there is no waiver of confidentiality when an agency discloses otherwise confidential information to another governmental agency when the recipient agency agrees to treat

the disclosed material as confidential. The recipient agency must identify in writing the persons who are permitted to obtain the information and that it will only use the confidential information for purposes that are consistent with existing law.

### **Policy**

The policy of OCPA going forward with respect to providing access to Members to confidential information will be as follows:

1. A Member will make a request in writing to the Chief Executive Officer of OCPA setting forth the confidential information that is requested under this Policy, the individuals who will have access to the confidential information and the purpose of the request;
2. The Member must enter into a Non-Disclosure Agreement with OCPA in a form reasonably acceptable to the General Counsel setting forth the obligations of the Member to protect confidential information of OCPA. Such Agreement will restrict full access to confidential information to individuals (employees or professional advisors) who are reasonably necessary for carrying out the intended evaluation of the information, with limited access via secure portal provided to individuals in a supervisory or oversight capacity;
3. The type of confidential information requested must be information that has been approved for access to Members by the Board of OCPA as set forth in Exhibit A to this Policy;
4. The scope and duration of any access to confidential information must be limited and reasonable so as not to place an undue administrative burden on OCPA or result in elevated risk of confidential information being subject to physical or digital misappropriation and unauthorized disclosure. For example, requests will be for discrete periods of time and will not be made more than two (2) times per year unless the Board otherwise agrees to establish an archive of a certain class of confidential information for regular access; and
5. To the extent that the General Counsel or Chief Executive Office of OCPA believes that there has been a change in law or circumstance that substantially alters the risk of providing confidential information pursuant to this Policy, then the Member request may be held for review by the Board at the next regularly scheduled general meeting.

EXHIBIT A  
TO POLICY NUMBER 22

Confidential Information that may be shared with Members:

1. Market sensitive information with respect to the purchase of energy, resource adequacy, renewable energy certificates and any other product required for regulatory purposes that is contained in unredacted long term power purchase agreements, enabling agreements (EEI and WSPP), transaction confirmations and other energy purchase agreements and contracts of a similar nature.
2. Market sensitive information contained in documents that are directly related to the performance of power purchase agreements and contracts referred to in item 1 above such as invoices, lockbox payment history and letters of credit.
3. Market sensitive information that is contained in regulatory filings of the Authority that are filed under seal.