

DOCKETED

Docket Number:	19-PSDP-01
Project Title:	Power Source Disclosure Program - 2018
TN #:	228484
Document Title:	Direct Energy Business LLC's Application for Confidential Designation
Description:	Application to file Year 2018 Power Source Disclosure materials confidentially
Filer:	Buck Endemann
Organization:	K&L Gates LLP
Submitter Role:	Applicant Representative
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K&L GATES

June 3, 2019

Buck B. Endemann
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CONFIDENTIAL

Drew Bohan
Executive Director
California Energy Commission
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Sacramento, CA 95814-5504

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Re: Docket 19-PSDP-01 - Application for Confidential Designation - Direct Energy Business, LLC Power Source Disclosure Annual Report

Dear Mr. Bohan:

On behalf of Direct Energy Business, LLC ("DEB"), please find enclosed DEB's Annual Report for the year ending December 31, 2018 in accordance with the California Energy Commission's Power Source Disclosure Program, along with an Application for Confidential Designation. DEB respectfully requests protection of portions of the Annual Report consistent with Title 20, California Code of Regulations ("CCR") Sections 2501 *et seq.* The enclosed CEC-13 form and associated attachments contain additional information.

Please feel free to contact me at (415) 882-8016 should you or Staff have any questions or require additional information regarding the Annual Report or application for confidentiality. We appreciate your consideration of our request.

Best Regards,

A handwritten signature in blue ink, appearing to be 'B. Endemann', followed by a horizontal line extending to the right.

Buck Endemann
Attorney for Direct Energy Business, LLC

Enclosure

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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 MB¹ or be password protected.² 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.

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: Direct Energy Business, LLC

Address: 12 Greenway Plaza, Suite 250, Houston, TX 77019

Phone and E-mail: (713) 354-4710

Proceeding or Project Name: Power Source Disclosure Program - 2018 Annual Reports

Docket Number: 19-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.**

2018 Power Source Disclosure Annual Report of Direct Energy Business, LLC, dated June 3, 2019, consisting of information entered on CEC template spreadsheets.

Due to spreadsheet template, DEB is unclear of exact number of pages.

Data to be maintained confidentiality as detailed in Section 1(b) below.

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

See Attachment 1(b).

¹Contact the Docket Unit if you cannot reduce the size of your file.

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



APPLICATION FOR CONFIDENTIAL DESIGNATION
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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.

DEB requests that the identified information be kept confidential until December 31, 2020. See Attachment 2.

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 Attachment 3(a).

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 Attachment 3(b).

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 Attachment 4.

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.

See Attachment 5.

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: June 3, 2019

Signed: /s/ Buck Endemann



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CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

Name (print or type): Buck B. Endemann

Title: (print or type) Partner at K&L Gates LLP

Representing: Outside Counsel for Direct Energy Business, LLC

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

APPLICATION FOR CONFIDENTIAL DESIGNATION
Direct Energy Business, LLC
Power Source Disclosure Annual Report (Year 2018)

Attachment 1(b)

DEB requests that the following information remain confidential, as also indicated by the orange highlighted cells on the Excel worksheet:

Form	Information to be held confidential
PSDP Schedule 1	<ul style="list-style-type: none">• Unspecified Power purchase data in cells N94, P94;• Total Net Purchases in cell O96;• Total Retail Sales information in cell O99.
PSDP Schedule 2	<ul style="list-style-type: none">• Total and Renewable Specific Purchases: Percent of Total Retail Sales in cells D13:D18, D24;• Unspecified Power: Net Purchases and Percentage of<ul style="list-style-type: none">○ Total Retail Sales in cells C26:D26;○ Total Net Purchases in cell C28;○ Total Retail Sales in cell C30.

APPLICATION FOR CONFIDENTIAL DESIGNATION
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Attachment 2

DEB requests that the identified information be kept confidential until December 31, 2020. This specific term is requested to align the protection of data provided by the California Energy Commission (“CEC”) with the protection of data provided by the California Public Utility Commission’s (“CPUC”) confidentiality program.

DEB’s power source information should be kept confidential because: (1) the specificity of this information is not otherwise publicly available or readily discoverable; (2) a summary of DEB’s very recent wholesale and retail activities is market sensitive and constitutes trade secrets; and (3) releasing DEB’s confidential commercial information would result in loss of competitive advantage in the wholesale and retail marketplaces relative to DEB’s ability to negotiate future contracts for the purchase or resale of energy and/or capacity at wholesale, or negotiation of contracts with retail customers.

Maintaining the confidentiality of data until December 31, 2020 is appropriate because the data is expected to retain validity and market value through that period, and because any lesser period would undermine existing protection of the same or substantially similar data by other regulators or market entities, including the CPUC, the California Air Resources Board and the California Independent System Operator (“CAISO”). DEB has also fashioned this request to reflect the scope of protection provided to energy service provider (“ESP”) data in CPUC Decision (“D.”) 06-06-066, Appendix 2 (“ESP Matrix”) and related modifications made in D.08- 04-023, in an effort to have consistency across California energy agencies.¹

¹ While DEB understands and acknowledges that the confidentiality rules granted by the CPUC and the CEC are different in some respects, DEB seeks to maintain consistency in the data it makes publically available. Consistency also prevents DEB from inadvertent disclosures of confidential information.

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Attachment 3(a)

The California Public Records Act exempts “trade secrets” from public disclosure, including “any formula, plan, . . . production data, or compilation of information . . . , which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service . . . and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.”² Under the California Evidence Code, information that is commercially sensitive is also considered a “trade secret.”³ CEC regulations provide for information to be designated as confidential if such information “contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage.”⁴

The information identified in Attachment 1(b) contains trade secrets or otherwise commercially sensitive data. Disclosing these trade secrets and commercially sensitive data would cause DEB loss of a competitive advantage. DEB operates in the competitive and dynamic retail energy markets and is a net purchaser in the competitive wholesale markets. To protect its commercial advantages over other ESPs and investor-owned utilities (“IOUs”), DEB has taken reasonable steps to preserve information on its retail and wholesale market positions in strict confidence. The data identified in Attachment 1(b) should be protected for the requested period because the information is commercially sensitive, not publicly available, and is otherwise unknown to those outside of DEB and the entities with which DEB enjoys trusted business relationships. The public interest in nondisclosure clearly outweighs the public interest in disclosure insofar as the release of DEB’s commercial data could be used to directly or indirectly determine DEB’s market position and procurement strategy to the detriment of DEB and its customers.⁵

Accordingly, DEB requests that all of the information described in Attachment 1(b), and any related, supporting data that may be provided pursuant to a subsequent CEC request, be designated as confidential.

² Cal. Gov. Code § 6254.7(d).

³ Cal. Evid. Code § 1060; Cal. Civ. Code § 3426.1(d).

⁴ Tit. 20, Cal. Code Regs., § 2505(a)(1)(D).

⁵ See Cal. Gov. Code § 6255(a) (establishing balancing test).

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Attachment 3(b)

DEB would be harmed by public disclosure of the information identified in Attachment 1(b) because the information reflects DEB's historical retail load for the year 2018. If disclosed, this information could be used to directly or indirectly determine DEB's market position to the detriment of DEB and its customers. Competitors could be able to ascertain DEB's Renewables Portfolio Standards obligations and make DEB's power procurement and compliance obligations more expensive, which could increase costs for DEB and its customers.

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Attachment 4

DEB has considered whether it would be possible to aggregate or mask the information identified in Attachment 1(b), and has concluded that it could support the aggregation of DEB- specific information with similar information from all other ESPs and solely disclosed on a statewide aggregated basis. DEB believes that disclosure of DEB-specific data of the types collected here, even if aggregated on a statewide basis but specific to DEB, could lead to the disclosure of DEB's wholesale and retail market positions and thereby result in harm to DEB. Given the degree of competition between ESPs, and between ESPs and IOUs, DEB asserts that any ESP-specific listing of data by utility territory would result in disclosure of confidential data.

**APPLICATION FOR CONFIDENTIAL DESIGNATION
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Attachment 5

DEB has not disclosed any of the information identified in Attachment 1(b) to anyone other than its employees, attorneys and consultants working with DEB, or government agency or CAISO employees subject to confidentiality responsibilities. DEB routinely keeps information of commercial value, like the subject information identified herein, confidential. In fact, all DEB employees, officers and directors are required to maintain the confidentiality of information entrusted to them by DEB or its customers, suppliers, business partners or others in the course of conducting business with the Company, except when disclosure is authorized or legally mandated.