

**DOCKETED**

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<b>Project Title:</b>	Power Source Disclosure Program - 2018
<b>TN #:</b>	229145
<b>Document Title:</b>	Response Letter to Ellison Schneider Harris & Donlan Regarding Application for Confidential Designation
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<b>Filer:</b>	Darlene Burgess
<b>Organization:</b>	California Energy Commission
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<b>Docketed Date:</b>	7/30/2019



July 25, 2019

Mr. Andrew Brown  
Ellison Schneider Harris & Donlan, LLP  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816

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

Dear Mr. Brown:

The Energy Commission is in receipt of Constellation New Energy's (Applicant) Application for Confidentiality for specified data contained in the 2018 Annual Report under the Power Source Disclosure program (PSDP). Specifically, the Applicant seeks confidentiality for the following data:

- 1) PSD Schedule 1 - Unspecified Power purchase data in cells N61, P61; Total Net Purchases in cell O63; Total Retail Sales in cell O6.
- 2) PSD Schedule 2 - Specific Purchases: Percent of Total Retail Sales in cells D13:D18, D24; Unspecified Power: Net Purchases and Percentage of Total Retail Sales in cells C26:D26; Total Net Purchases in cell C28; Total Retail Sales in cell C30.

The application notes that the data should be kept confidential because: (1) the information is not otherwise publicly available or readily discoverable in the form or detail provided at this time; (2) the information is market sensitive and constitutes trade secrets in terms of disclosing the Applicant's very recent wholesale and retail activities; and (3) the release of this information will result in loss of competitive advantage in the wholesale and retail marketplaces relative to the Applicant'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.

The application states that confidential information contained in the annual report may be disclosed if it is aggregated with the same type of data reported by other energy service providers.

The application is seeking confidentiality for the percent of retail sales as set forth 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, 2019. 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 percent data in Schedule 2, column D, this data cannot be designated as confidential. However, the Applicant

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has made a reasonable claim that the law allows the California Energy Commission to keep all reported megawatt hours contained in the annual report from public disclosure. This would include the MWh values listed in Schedule 2, column C.

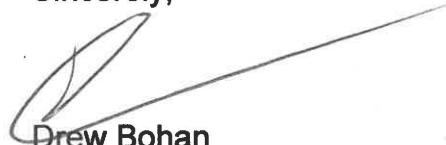
The Applicant requests that the information be kept confidential until December 31, 2019, which represents the amount of time the same or substantially similar data is considered confidential by the California Public Utilities Commission. The information may be released if the applicant-specific information is aggregated with information from all other Energy Service Providers on a statewide level.

For these reasons, the request for confidential designation for the reported megawatt hours contained in the annual report 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](mailto:jared.babula@energy.ca.gov) or (916) 651-1462.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Bohan", with a long horizontal stroke extending to the right.

Drew Bohan  
Executive Director