

DOCKETED

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October 31, 2019

Mr. Andrew B. Brown
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Sacramento, CA 95816

**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 Agera Energy LLC's (Applicant) Application for Confidentiality for specified data contained in the 2018 Power Source Disclosure Annual Report. Specifically, the Applicant seeks confidentiality for the following data:

- 1) PSD Schedule 1 - Unspecified purchases data in cells N16, P16; Total Net Purchases in cell O18; Total Retail Sales in cell O21.
- 2) PSD Schedule 2 - Unspecified Power: Net Purchases in cell C26; Total Net Purchases in cell C28; Total Retail Sales in cell C30.

The application notes that the data contains trade secrets or otherwise commercially sensitive data, the disclosure of which would cause loss of a competitive advantage. As an entity operating in the competitive and dynamic retail energy markets, as well as a net purchaser in the competitive wholesale markets, the Applicant states that it holds information on its retail and wholesale market positions in confidence. The Applicant states information can be used to directly or indirectly determine market position to the detriment of the Applicant and its 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.

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.

Confidentiality is sought for procurement information reported as megawatt hours related to retail energy sales information and not the percent data, which is publicly disclosed on power content labels. The Applicant has made a reasonable claim that the law allows the Energy Commission to keep all reported megawatt hours contained in the annual reports from public disclosure.

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.

For these reasons, the request for confidential designation for the data identified above and contained in the annual report is granted until December 31, 2019.

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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).

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the Executive Director may disclose or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, or raising, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506-2508.

If you have any questions concerning this matter, please contact Jared Babula, senior attorney, at jared.babula@energy.ca.gov or (916) 651-1462.

Sincerely,



Drew Bohan
Executive Director