

DOCKETED

Docket Number:	21-PSDP-01
Project Title:	Power Source Disclosure Program - 2020
TN #:	240103
Document Title:	CEC Response Letter EDF Confidentiality Application 5-2-21 6-1-21
Description:	N/A
Filer:	Pam Fredieu
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	10/20/2021 11:20:39 AM
Docketed Date:	10/20/2021



September 30, 2021

Via Email

Gregory Klatt
EDF Industrial Power Services (CA), LLC
4700 W. Sam Houston Parkway North, Suite 250
Houston, Texas 77041
klatt@energyattorney.com

**Application for Confidential Designation for Data in Power Source
Disclosure Program Annual Report, Docket 21-PSDP-01**

Dear Gregory Klatt:

The California Energy Commission (CEC) received the confidentiality application submitted by EDF Industrial Power Services (CA), LLC (applicant or EDF) on May 26, 2021, and received the revised confidentiality application on June 1, 2021, for specified data contained in the 2020 Annual Report under the Power Source Disclosure (PSD) program. Specifically, confidentiality is sought for:

PSD Schedule 1 –

Retail Sales data (Cell L7), Procurement data (Columns H, J, I & K), GHG Emissions Column M) and derivative totals (Cells N814).

PSD Schedule 2 –

Retired Unbundled RECs (Column E).

PSD Schedule 3 –

Adjusted Net Procured MWh (Column B) and Total Retail Sales (Cell C27).

Confidential designation of this data is requested pursuant to Title 20, California Code of Regulations, section 2505, on the grounds that the information disclosure of Applicant's 2020 retail sales or data that could be used to derive its 2020 retail sales could, in combination with certain RPS-related procurement data Applicant is required to report to the CPUC that is not confidential, be used to derive Applicant's RPS "net short" position, which information could in turn be used to the company's business disadvantage by wholesale suppliers in commercial negotiations with Applicant for the purchase and sale of RPS-eligible electricity products, with no offsetting public interest benefit from public disclosure of said data.

A properly filed Application for Confidentiality shall be granted under Title 20, California Code of Regulations, section 2505(a)(3)(A), “if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [CEC] to keep the record confidential.” The California Public Records Act allows for the non-disclosure of corporate proprietary information including trade secrets. (Gov. Code, sections 6254(k), 6276.44; see also Evid. Code, section 1060; Civ. Code, section 3426.1.) Government Code section 6255 also permits the CEC to withhold a public record where “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”

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, 207-208, from the Restatement of Torts, vol. 4, section 757, comment b, p. 5.)

Title 20, California Code of Regulations, 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.

Here, the application states that the data should be kept confidential because EDF does not publicly disclose its total retail sales and related information that could be used to calculate total retail sales, and because its public release could inform sellers of the applicant’s power capacity requirements and use the information to “manipulate the market,” resulting in the applicant and its retail customers paying more for power. The application also states that confidential information contained in the annual reports may be disclosed if it is aggregated with the same type of data reported by other energy service providers or load serving entities, and steps are taken to ensure that the applicant’s specific data cannot be ascertained.

The application requests the total retail sales be kept confidential and not publicly disclosed for a period no less than one year. The CEC has historically granted confidentiality for this type of data either through December 31 at which time the data will be one year old, or until an entity’s power content label is publicly released (see Pub. Util. Code section 398.4), whichever is earlier. A term ending

one year from the end of the reporting period also represents the amount of time this type of data is considered confidential by the California Public Utilities Commission (CPUC). (Decisions R05-06-040 [Appendix B, Electric Service Provider (ESP) Matrix, section V], and D06-06-066 [Appendix 2, ESP Matrix, *Market Purchases of Energy and Capacity: public after one year*].)

Based on this information, the confidentiality application is hereby approved until the applicant publicly releases its power content label, which is to be released no later than through December 31, 2021.

The information may be released before December 31, 2021 or publication of the power content label if applicant-specific information is aggregated with information from all other statewide energy service providers. Load serving entities provide quarterly annual retail sales under Title 20, California Code of Regulations, section 1306. As set forth in Title 20, California Code of Regulations, section 2507(e)(1)(A)(1), the quarterly data can be publicly disclosed for an individual load serving entity if aggregated at the statewide level by year. Therefore, data submitted consistent with this aggregation will not be confidential.

Be advised that persons may petition to inspect or copy records that the CEC has 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, filing, reviewing, and acting upon such petitions or motions are set forth in the Title 20, California Code of Regulations, sections 2506-2508.

You may request confidentiality for similar data in a future annual report without submitting an application by following the procedures set forth in Title 20, California Code of Regulations, section 2505(a)(4).

If you have any questions, please contact Raj Dixit, attorney, at raj.dixit@energy.ca.gov or (916) 776-3055.

Sincerely,



Drew Bohan
Executive Director