

DOCKETED

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September 9, 2021

Via Email

Greg Bass
Regulatory Director
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Application for Confidential Designation for Data in Integrated Energy Policy Report, Docket 21-IEPR-03

Dear Greg Bass:

The California Energy Commission (CEC) received the confidentiality application submitted by Calpine Energy Solutions (CES or applicant) on June 18, 2021, for specified data contained in the 2021 Integrated Energy Policy Report (IEPR). Specifically, confidentiality is sought for:

Form 7.1

Retail Sales in megawatt-hours (MWh), actual and forecasted, for the years 2019-2024

Peak Demand in megawatts (MW), actual and forecasted, for the years 2019-2024

Customer Counts (Residential and Nonresidential, actual, and forecasted, for the years 2019-2024

Form 8.1(a) (ESP)

Total Estimated Power Supply Costs, actual and forecasted, for the years 2019-2032

Confidential designation of this data is requested pursuant to Title 20, California Code of Regulations, section 2505, on the grounds that the information is not otherwise publicly available or readily discoverable in the form or detail provided at this time, that the information is market sensitive and constitutes trade secrets in terms of disclosing applicant's very recent wholesale and retail activities, and that the release of this information will result in loss of competitive advantage in the wholesale and retail marketplaces relative to 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 also states that confidentiality is appropriate under Government Code section 6255(a) because the public interest in nondisclosure clearly outweighs the public interest in disclosure.

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 constitutes trade secrets or otherwise commercially sensitive data, which has not been disclosed to anyone except the applicant's employees, government agencies, or California Independent Systems Operator (California ISO) subject to confidentiality protections. The application states that the applicant operates in the competitive and dynamic retail energy markets and is a net purchaser in the competitive wholesale markets, so the confidentiality of data regarding its retail and wholesale market positions is a competitive advantage. The application also states that disclosure of this information can be used to directly or indirectly determine the applicant's market position and would result in a loss of competitive advantage in the wholesale and retail marketplaces relative to its ability to negotiate future contracts for the purchase or resale of energy, or with respect to negotiation of contracts with retail customers.

The application also states that confidential information contained in the annual reports may be disclosed if it is aggregated on a statewide basis 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 further requests the total retail sales be kept confidential and not publicly disclosed for a three-year period, that is, until December 31, 2024.

Based on this information, the confidentiality application for the data in Form 8.1(a) (ESP) is hereby approved. The data will remain confidential through December 31, 2024, or until it is publicly released, whichever is earlier.

The information contained in Form 7.1 does not constitute trade secrets, nor does the public interest in non-disclosure of such data outweigh the public interest in its disclosure. This conclusion is supported, in part, by the CEC's Order Denying Southern California Edison Company's Appeal of Executive Director Decision Denying Confidentiality, dated April 13, 2005, and, in part, in the subsequent decision in Superior Court upholding that Order (Case No. 05cs00860).

However, the information contained in Form 7.1 may be aggregated statewide with the same type of data reported by other energy service providers or load serving entities, and steps are taken to ensure that CES's specific data cannot be ascertained. Based on this information, the confidentiality application for the information contained in Form 7.1 is approved through December 31, 2024, or until it is publicly released, whichever is earlier. The information in Form 7.1 may be released before December 31, 2024, or other public release, 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 Title 20, California Code of Regulations, sections 2506-2508.

Greg Bass
September 1, 2021
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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 K. Dixit, attorney, at raj.dixit@energy.ca.gov or (916) 776-3055.

Sincerely,

A handwritten signature in black ink, appearing to be 'Drew Bohan', written in a cursive style.

Drew Bohan
Executive Director