

DOCKETED

Docket Number:	21-IEPR-03
Project Title:	Electricity and Natural Gas Demand Forecast
TN #:	240427
Document Title:	Response Letter to Direct Energy Business Application for Confidential Designation
Description:	N/A
Filer:	Ngoc Tran
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	11/8/2021 3:10:33 PM
Docketed Date:	11/8/2021



August 16, 2021

Via Email

Barbara Farmer
Licensing & Reporting Analyst
Direct Energy Business, LLC
12 Greenway Plaza, Suite 250
Houston, Texas 77046
barbara.farmer@directenergy.com

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

Dear Barbara Farmer:

The California Energy Commission (CEC) received Direct Energy Business, LLC's confidentiality application on June 29, 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 2019-2026.

Peak Demand in megawatts (MW), actual and forecasted, for 2019-2026.

Customer Counts (Residential and Nonresidential, actual, and forecasted, for 2019-2026.

Form 8.1a (ESP) –

Total Estimated Power Supply Costs, actual and forecasted, for 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 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 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 CAISO subject to confidentiality projections. 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 that the data be kept confidential until December 31, 2024, except for the data for the year 2019 in Form 8.1a (ESP), for which confidentiality is requested until December 31, 2022.

Based on this information, the confidentiality applications are hereby approved. The data in form 8.1a (ESP) for the year 2019 will remain confidential through December 31, 2022, or until it is publicly released, whichever is earlier. All other data will remain confidential through December 31, 2024, or until it is publicly released, whichever is earlier.

The information may be released before December 31, 2024 (or December 31, 2022, for the 2019 data in Form 8.1a (ESP)), 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 the Title 20, California Code of Regulations, sections 2506-2508.

Ms. Farmer
August____, 2021
Page 4

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 read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan
Executive Director