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**CALIFORNIA
ENERGY COMMISSION**



November 2, 2021

Via Email

Gregory Klatt
Tiger Natural Gas, Inc.
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**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 applications submitted by Tiger Natural Gas, Inc. (Tiger Natural Gas or applicant) May 26, 2021, and 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, and 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 California Code of Regulations (CCR), Title 20, section 2505, on the grounds that the disclosure of 2020 retail sales or data that could be used to derive 2020 retail sales could, in combination with certain RPS-related procurement data required to be reported to the California Public Utilities Commission (CPUC) that is not confidential, be

used to derive RPS "net short" position. This information could be used to the Tiger Natural Gas' disadvantage by wholesale suppliers in commercial negotiations for the purchase and sale of RPS-eligible electricity products, with no offsetting public interest benefit from the public disclosure of the data.

A properly filed Application for Confidentiality shall be granted under CCR, 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 [CEC] to keep the record confidential." The California Public Records Act allows for the non-disclosure of corporate proprietary information including trade secrets. (Government Code, sections 6254(k), 6276.44; see also Evidentiary Code, section 1060; Civil 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.)

CCR, 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.

Here, the application states that the data should be kept confidential because Tiger Natural Gas 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 (Public Utility 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 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, CCR, section 1306. As set forth in CCR, Title 20, 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 CCR, Title 20, sections 2506-2508.

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You may request confidentiality for similar data in a future annual report without applying by following the procedures set forth in CCR, Title 20, 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,

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

Drew Bohan
Executive Director