

DOCKETED

Docket Number:	21-IEPR-03
Project Title:	Electricity and Natural Gas Demand Forecast
TN #:	240627
Document Title:	CEC IEPR Response Letter Pilot Power Group Confidential Application June 29, 2021
Description:	N/A
Filer:	Pam Fredieu
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	11/17/2021 3:01:13 PM
Docketed Date:	11/17/2021



November 17, 2021

Via Email

Andy Anderson
Pilot Power Group, LLC
8910 University Center Lane, Suite 520,
San Diego, California 92122

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

Dear Andy Anderson:

The California Energy Commission (CEC) received Pilot Power Group, LLC's, application for confidential designation (application) on June 29, 2021, for specified data submitted in the *2021 Integrated Energy Policy Report* (IEPR) proceeding. Specifically, the confidential designation is sought for:

Form 7.1

ESP Report of Loads and Resources Under Contract

- i. Retail Sales, Peak Demand and Customer Counts for PGE, SCE, and SDGE service territories for the calendar years 2019 through 2021.

Form 8.1(a)

(ESP) Estimated Power-Supply Costs

- i. Historical and future costs for all supply contracts for calendar years 2019 through 2021.

Confidential designation of this data is requested pursuant to Title 20, California Code of Regulations (CCR), section 2505. The application states the information contains trade secrets or otherwise commercially sensitive data the disclosure of which would cause loss of a competitive advantage. The application notes that the applicant operates in the highly competitive and dynamic retail energy markets and the applicant closely holds information on its retail and wholesale market positions in confidence.

The application also notes the information is commercially sensitive and not publicly available and constitutes trade secrets the public disclosure of which would harm applicant and can be used to identify and determine applicant's market position and business plans to the detriment of applicant and its customers.

Finally, the application states, given the intense competition between ESPs, and between ESPs and the IOUs, any ESP-specific listing of data by utility territory would result in disclosure of trade secrets, commercially sensitive data, and confidential data.

A properly filed application for confidential designation shall be granted under Title 20, CCR, 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. Howie* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, section 757, comment b, p. 5.)

Title 20, CCR, 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 publicly. The application 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 retail energy markets.

The application states that data could be disclosed if with similar information from all other energy service providers and solely disclosed on a statewide aggregated basis.

Based on this information, the application for confidential designation is hereby approved. Data for 2019 will be confidential for the requested period of one year from the time of production to the CEC, and the data for 2020 through 2021 will be held confidential for a period of three years from the time of production to the CEC.

The information may be released before these dates, if applicant-specific information is aggregated with information from other load serving entities. Load serving entities provide quarterly annual retail sales under CCR, Title 20, 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 under CCR, Title 20, section 2506, one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy records is issued by the CEC's chief counsel. Under CCR, Title 20, section 2507, 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.

You may seek a confidential designation for information that is substantially similar to information for which an application for confidential designation was granted by the Executive Director by following the procedures set forth in CCR, Title 20, section 2505(a)(4).

If you have any questions, please contact Jared Babula, attorney IV, at jared.babula@energy.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Drew Bohan", with a long horizontal stroke extending to the right.

Drew Bohan
Executive Director