

DOCKETED

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July 7, 2022

Via Email

Daniel S. Hashimi
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**Application for Confidential Designation:
Form 2 – Systemwide Wholesale Demand
Docket No. 22-IEPR-03**

Dear Daniel S. Hashimi:

The California Energy Commission (CEC) has received the Pacific Gas and Electric Company's (PG&E) application for confidential designation, dated May 16, 2022, for Form 2 – Systemwide Wholesale Demand (Daily Natural Gas Demand Report), which was voluntarily requested of PG&E by CEC staff.

An application for confidential designation shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), “. . . if the applicant makes a reasonable claim that the [California] Public Records Act or other provision of law authorizes the [California Energy] Commission to keep the record confidential.” The executive director's determination made in response to an application for confidential designation is subject to a reasonableness standard. It is the applicant's burden to make a reasonable claim for confidentiality based on the California Public Records Act and other applicable laws.

The application states that the Daily Natural Gas Demand Report should be kept confidential in its entirety for three years. The application does not cite any provisions of the California Public Records Act, but identifies the following bases for nondisclosure:

1. Trade secret and intellectual property
2. California Code of Regulations, title 20, section 2505(a)(5)(1)
3. Civil Code sections 1798.98 and 1798.99
4. Civil Code section 1798.80 et seq.

5. Public Utilities Code section 8380(d)
6. California Public Utilities Commission (CPUC) Decisions

Trade Secret/Intellectual Property

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 6254(k), 6276, 6276.44; Evid. Code, § 1061(a); Civ. Code, § 3426.1(d).) California Code of Regulations, 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, the application shall state (1) the specific nature of the advantage, (2) how the advantage would be lost, (3) the value of the information to the applicant, and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Civil Code section 3426.1(d) defines “trade secret” as:

“[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

(Civ. Code, § 3426.1(d); See also Gov. Code, §§ 6254(k), 6276, 6276.44; Code, § 1061(a); Uribe v. Howie (1971) 19 Cal.App.3d 194, 207.)

The application claims the disclosure of the Daily Natural Gas Demand Report would allow any market participant or competitor to use the information to the detriment of PG&E and its customers, would jeopardize the privacy of individual customer daily demand information on PG&E’s gas system, would violate the privacy interest of PG&E customers, would put PG&E customers at a competitive disadvantage because it could be used by PG&E competitors and other market participants to gain an advantage they otherwise would not have, resulting in high costs for PG&E customers. The application further states that PG&E keeps the information confidential by limiting the distribution of this information only to those who are authorized to view it. Last, PG&E states there is an insufficient number of wholesale customers to provide an adequate level of aggregation, saying the Daily Natural Gas Demand Report represents six PG&E customers.

The CEC disagrees that the Daily Natural Gas Demand Report is a trade secret. There is a sufficient level of aggregation that no one individual utility user's usage can be discerned from the data in the Daily Natural Gas Demand Report and, thus, (1) there is not an independent economic value, actual or potential, from not being generally known to the public or other persons who can obtain economic value from its disclosure or use, and (2) it is not reasonable under the circumstances to maintain its secrecy. Therefore, the information is not a trade secret or intellectual property and is subject to disclosure.

California Code of Regulations, title 20, section 2505(a)(5)(1)

California Code of Regulations, title 20, section 2505(a)(5)(B)(1)-(9), allows for the automatic designation of certain categories of information submitted to the CEC by a private third party without an application for confidentiality. The data at issue, daily aggregated wholesale natural gas demand, does not fall under any of the automatically confidential categories. Therefore, this section does not provide a basis for confidentiality.

Civil Code sections 1798.98 and 1798.99

Civil Code sections 1798.98 and 1798.99 govern the privacy of customer natural gas usage data. Civil Code section 1798.98 defines various terms, including, among others, business, customer, and data. Civil Code section 1798.98, subdivisions (a)(1) through (3), define business to mean a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit; define customer to mean a customer of a gas corporation that allows a business to have access to data in association with purchasing or leasing a product or obtaining a service from the business; and define data to mean a customer's natural gas usage that is made available to a business as part of an advanced metering infrastructure provided by a gas corporation and includes the name, account number, or physical address of the customer.

Additionally, Civil Code section 1798.98 states that the provisions of that section do not apply to a gas corporation pursuant to Public Utilities Code section 8380(f) or 8381(f). Both of those Public Utilities Code provisions state that a gas corporation is not precluded from using customer aggregate gas consumption data for analysis, reporting, or program management if all information has been removed regarding the individual identity of a customer.

Civil Code section 1798.99 authorizes a customer harmed by the release or unauthorized use of their customer data in violation of Civil Code section 1798.98 to bring a civil action to recover actual damages in an amount not to exceed \$500 for each willful violation.

The application claims that the Daily Natural Gas Demand Report represents PG&E customer energy consumption metering data in the form of wholesale gas system customer daily demand metered information and that, in total, the wholesale gas system daily demand data represents data from only six PG&E customers, which if made public, presents a significant risk of a customer's energy consumption and PG&Es closely held intellectual property and trade secret information.

The CEC finds that Civil Code sections 1798.98 and 1798.99 do not apply because there is a sufficient level of aggregation that no one individual utility user's usage can be discerned from the data in the Daily Natural Gas Demand Report. Thus, the information is subject to disclosure.

Civil Code section 1798.80 et seq.

Civil Code section 1798.80 et seq. governs the retention and disposal of customer records involving personal information maintained by a business. Civil Code section 1798.80 excludes from its definition of personal information publicly available information that is lawfully made available to the general public from federal, state, or local government records. The definition of personal information in Civil Code section 1798.80 does include any information that identifies, relates to, describes or is capable of being associated with a particular individual.

The application claims that the Daily Natural Gas Demand Report represents PG&E customer energy consumption metering data in the form of wholesale gas system customer daily demand metered information and that, in total, the wholesale gas system daily demand data represents data from only six PG&E customers, which if made public, presents a significant risk of a customer's energy consumption and PG&Es closely held intellectual property and trade secret information.

The CEC finds that Civil Code section 1798.80 et seq. does not apply because there is a sufficient level of aggregation that no one individual utility user's usage can be discerned from the data in the Daily Natural Gas Demand Report. Thus, the information is subject to disclosure.

Public Utilities Code section 8380(d)

Public Utilities Code section 8380(d) requires a gas corporation to use reasonable security procedures and practices to protect a customer's unencrypted gas consumption data from unauthorized access, destruction, use, modification, or disclosure.

The application claims that the Daily Natural Gas Demand Report represents PG&E customer energy consumption metering data in the form of wholesale gas system customer daily demand metered information and that, in total, the wholesale gas system daily demand data represents data from only six PG&E customers, which if made public, presents a significant risk of a customer's energy consumption and PG&Es closely held intellectual property and trade secret information.

The CEC finds that Public Utilities Code section 8380(d) does not apply because there is a sufficient level of aggregation that no one individual utility user's usage can be discerned from the data in the Daily Natural Gas Demand Report. Thus, the information is subject to disclosure.

CPUC Decisions

The privacy rules adopted by the CPUC in D.11-07-056 and D.14-05-016 are not relevant in the current matter because a CPUC decision does not apply to the CEC, and neither decision prohibits the disclosure of information that cannot be linked to a particular customer as is the case with the aggregated wholesale demand data.

Conclusion

Based on the applicant's claims and a review of the Daily Natural Gas Demand Report, the applicant has not made reasonable claims under the law that authorizes the granting of confidentiality status. Thus, the CEC will not keep confidential the Daily Natural Gas Demand Report, and the CEC may disclose it.

You may request that the CEC determine the confidentiality of records that the executive director denied confidential designation. You have 14 days to request that the CEC determine the confidentiality of the record. If you make such a request, the CEC will conduct a proceeding pursuant to the provisions in the California Code of Regulations, title 20, section 2508.

Be advised that under the California Code of Regulations, 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 the California Code of Regulations, title 20, section 2507, the executive director may disclose, or release records previously designated as confidential in certain circumstances. The procedures for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set in the California Code of Regulations, title 20, sections 2506 to 2507.

Daniel S. Hashimi
July 7, 2022
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If you have any procedural questions regarding this application for confidential designation, please contact Jared Babula, senior attorney, at Jared.Babula@energy.ca.gov.

Sincerely,

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

Drew Bohan
Executive Director