

DOCKETED

Docket Number:	22-PSDP-01
Project Title:	Power Source Disclosure Program - 2021 Reporting
TN #:	247607
Document Title:	CEC response for Confidential Designation Direct Business Energy 9-20-22
Description:	N/A
Filer:	Pam Fredieu
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	11/21/2022 2:04:48 PM
Docketed Date:	11/21/2022



**CALIFORNIA
ENERGY COMMISSION**



November 21, 2022

Via Email

Barbara Farmer
Direct Energy Business LLC
910 Louisiana Street, Suite B200
Houston, Texas 77002
barbara.farmer@nrg.com

**Application for Confidential Designation for Final Power Source Disclosure
Program Annual Report
Docket No. 22-PSDP-01**

Dear Barbara Farmer:

The California Energy Commission (CEC) has received Direct Business Energy, LLC's (applicant) application for confidential designation, dated September 20, 2022, covering the following data contained in the Final Power Source Disclosure Annual Report:

PSD Schedule 1

- Total of Retail Sales in cell N7
- Total of Net Specified Procurement in cell N8
- Total Unspecified Power (MWh) in cell N9
- Total Net Specified Nuclear, Large Hydro & Renewables in cell N13
- Total GHG Emissions (excludes grandfathered emissions) in cell N14.

PSD Schedule 2

- Total Unbundled RECs in cell E9.

PSD Schedule 3

- Total and Renewable Specific Purchases Percent of Total Retail Sales in cells C13:C22 and Other C23
- Total Unspecified Power B24
- Total Percentage Unspecified Power cell C24
- Total Net Purchases in cell B25
- Total Retail Sales in cell C27
- Total Percentage of Retail Sales Cover by Retired Unbundled RECs in cell C31.

The applicant asserts the data contains trade secret and proprietary information, which is not made public by the applicant. The applicant states the data can be aggregated with other similar data and made public.

A properly filed Application for Confidentiality shall be granted under California Code of Regulations, 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 [California Energy] Commission to keep the record confidential.” The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.)

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; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

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.

The application addresses each of these four requirements as follows:

The specific nature of the advantage – DEB operates in the competitive and dynamic retail energy markets and is a net purchaser in the competitive wholesale markets. To protect its commercial advantages over other ESPs and investor-owned utilities, DEB has taken reasonable steps to preserve information on its retail and wholesale market positions in strict confidence.

How the advantage would be lost – DEB would be harmed by public disclosure of the information because the information reflects DEB’s historical retail load for the year 2021. If disclosed, this information could be used to determine DEB’s market position to the detriment of DEB and its customers. Competitors could be able to ascertain DEB’s Renewables Portfolio Standards obligations and make DEB’s power procurement and compliance obligations more expensive, which could increase costs for DEB and its customers.

The value of the information to the applicant – Confidentiality ensures DEB’s market position cannot be used to the detriment of DEB.

The ease or difficulty with which the information could be legitimately acquired or duplicated by others – DEB has not disclosed any of the information identified to anyone other than its employees, attorneys and consultants working with DEB, or government agency or CAISO employees subject to confidentiality responsibilities. DEB routinely keeps information of commercial value, like the subject information identified herein, confidential.

The applicant has made a reasonable claim that the data is exempt from disclosure as trade secrets. The applicant addresses the four elements identified in California Code of Regulations, title 20, section 2505(a)(1)(D), as described above.

The applicant has not made a reasonable claim that the GHG emissions data contained in Schedule 1 can be designated as confidential. Public Utilities Code section 398.4 requires every retail supplier that makes an offering to sell electricity that is consumed in California to disclose to consumers its electricity sources and the associated greenhouse gas emissions intensity for the previous calendar year. California Health & Safety Code section 38530 also requires the reporting and verification of GHG emissions. Finally, California Government Code section 6254.7 states all air or other pollution monitoring data, including data compiled from stationary sources, are public records.

The application requests the data be confidential until December 31, 2022. This term is consistent with the one-year period this type of data is considered confidential by the CPUC. (See Order Instituting Rulemaking, R.05-06-040, D.06-06-066 Appendix 2 and D.08-04-023 Appendix B, ESP Confidentiality Matrix Section V *Market Purchases of Energy and Capacity*.)

Executive Director's Determination

For the reasons stated, the energy data is granted confidentiality until December 31, 2022. The data may be released before December 31, 2022, if applicant-specific information is aggregated with information from all other statewide energy service providers. Confidentiality is denied for all GHG emissions information.

Note that load serving entities provide quarterly annual retail sales under Title 20, CCR, section 1306. As set forth in California Code of Regulations, title 20, section 2507(f)(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.

You may request that the CEC determine the confidentiality of records for which 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.

Barbara Farmer
November 21, 2022
Page 4

Be advised that under 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 confidential records is issued by the CEC's chief counsel. Under California Code of Regulations, title 20, section 2507, the executive director may disclose records, 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 forth in the California Code of Regulations, title 20, sections 2506-2508.

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 procedural questions, please contact Jared Babula, attorney, at jared.babula@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal flourish extending to the right.

Drew Bohan
Executive Director