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December 27, 2022

Via email

Greg Bass
Regulatory Director
Calpine Energy Solutions
401 West A Street, Suite 500
San Diego, California 92101
greg.bass@calpinesolutions.com

**Application for Confidential Designation for Data in Integrated Energy
Policy Report
Docket No.: 22-IEPR-03**

Dear Greg Bass:

The California Energy Commission (CEC) has received Calpine Energy Solutions LLC's (applicant) Application for Confidentiality docketed September 9, 2022, (TN 245927) covering the following data:

- Form S-1 Capacity/Energy Requirement – Forecasted annual Peak Demand Calculations and annual Capacity Purchases
- Form S-2 Capacity/Energy Supply Resources – Expected annual Energy Demand and annual bilateral contracted generation
- Form S-5 Bilateral Contracts Table – Information regarding physical supply arrangements and bilateral contract information for the years 2020-2031

The applicant states that such data should be designated confidential for three years from the application date. The applicant offers two claims to support confidentiality; automatic confidentiality as set forth in California Code of Regulations, title 20, section 2505 (a)(5)(B)(1) or (a)(5)(B)(2), and that the data comprises commercially sensitive trade secrets under Government Code Section 6254.7(d).

Confidentiality Claims

Automatic Designation

Under California Code of Regulations, title 20, section 2505(a)(5) the data may be automatically designated confidential by the CEC if the data meets the requirements of (a)(5)(A) and (B). Section 2505(a)(5) states, in relevant part:

- (A) The entity submitting the information shall label each individual item of the submittal that is entitled to be designated confidential.

(B) The entity submitting the information shall attest under penalty of perjury that the information submitted has not been previously released and that it falls within one of the following categories:

1. Information that is derived from energy consumption metering, energy load metering research projects, or energy surveys provided pursuant to Section 1343 or 1344 of Article 2 of Chapter 3, and that is one or more of the following:

a. for the residential customer sector and the commercial customer sector -- customer identifiers, energy consumption, and any other information that could allow a third party to uniquely identify a specific respondent;

b. industrial major customer sector -- all information;

c. survey design information -- all information used to design a survey, stratify billing records, devise a sample scheme, select a sample, sample specific end-users for participation in a survey or a pre-test of a questionnaire or interview form.

2. Energy sales data provided pursuant to Section 1306, 1307, or 1308(c) of Article 1 of Chapter 3, if the data is at the greatest level of disaggregation required therein.

Proprietary Business Information and Trade Secrets

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 Public Records Act or other provision of law authorizes the 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 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; Civ. Code, § 3426.1; 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.

Discussion

The information submitted by applicant does not meet the requirements for confidentiality under California Code of Regulations, title 20, section 2505(a)(5)(A), (B)(1) and (B)(2).

The information submitted was not submitted pursuant to California Code of Regulations sections 1343, 1344, 1306, 1307, or 1308 (c). Section 2505(a)(5)(A), (B)(1) and (2) are intended to apply to residential and commercial saturation survey data and Quarterly Fuel and Energy Report data.

The applicant addresses the four elements necessary to establish a trade secret claim (Cal. Code Regs., tit. 20, § 2505(a)(1)(D)) for the accompanying information as follows:

- 1) *The specific nature of the advantage* – This information could be used to determine Calpine Solutions’ historical and forecasted power and capacity needs. Competitors, suppliers, and customers could use this information to extract better terms in contract negotiations.
- 2) *How the advantage would be lost* – Disclosure of this information could lead to competitors refining their business strategies. Further, suppliers could use this information to Calpine Solutions’ disadvantage when negotiating the price and terms of procurement transactions.
- 3) *The value of the information to the applicant* – No dollar amount specified, but this information could be used to undermine Calpine Solutions’ position in contract negotiations with competitors, suppliers, and customers.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – Calpine Solutions is not aware of any way in which this information could be legitimately acquired or duplicated by others.

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Applicant has made a reasonable claim that the submitted information is exempt from disclosure as business proprietary or trade secrets.

Therefore, the CEC designates the above-described information as confidential for three years.

Executive Director's Determination

For the reasons stated above, confidentiality is approved as to the information submitted in TN 245927 for a period of three years.

Be advised that under Title 20, California Code of Regulations 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 Title 20, California Code of Regulations 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 Title 20, California Code of Regulations, sections 2506-2508.

If you have any questions, please contact Tanner Kelsey, staff counsel at tanner.kelsey@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director