

**DOCKETED**

<b>Docket Number:</b>	23-IEPR-02
<b>Project Title:</b>	Electricity Resource Plans
<b>TN #:</b>	251155
<b>Document Title:</b>	Direct Energy Business, LLC's Confidentiality Request
<b>Description:</b>	Request for Confidential Treatment of Data
<b>Filer:</b>	Barbara S. Farmer
<b>Organization:</b>	BARBARA FARMER
<b>Submitter Role:</b>	Applicant
<b>Submission Date:</b>	7/24/2023 9:54:33 AM
<b>Docketed Date:</b>	7/24/2023

**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

In the Matter of:

2023 Integrated Energy Policy Report (IEPR)

Docket No. 23-IEPR-03  
(Electricity Demand Forecasts)

**APPLICATION OF DIRECT ENERGY BUSINESS, LLC  
FOR DESIGNATION OF CONFIDENTIAL RECORDS**

Pursuant to Section 25322 of the Public Resources Code (“PRC”) and Section 2505(a) of Title 20 of the California Code of Regulations (“CCR”), Direct Energy Business, LLC, formerly Strategic Energy, L.L.C. (“Applicant”) hereby requests that the Commission designate as confidential the information specified herein and submitted by Applicant on July 3, 2021, concerning Applicant’s historical and forecast load data contained in ESP Report of Loads and Resources Under Contract, Form 7.1 and historical and forecast power supply cost data contained in Electricity Demand Forecast Form 8.1a (ESP).

**1 (b) DATA REQUESTED AS CONFIDENTIAL:**

**A. FORM 7.1 ESP Report of Loads and Resources Under Contract:**

Form 7.1 contains the following information for each utility distribution area in which Applicant serves load:

1. Applicant’s historical and projected annual retail sales for customers under contract, stated in megawatt-hours (“MWh”).
2. Applicant’s historical and projected annual peak demand, stated in megawatts (“MW”).
3. Applicant’s historical and projected residential and non-residential customer counts.

The period covered by the information contained in *Form 7 is 2021 through 2034*, the last year in which Applicant currently has load under contract.

**B. FORM 8.1(a) ESP Electricity Resource Planning:**

Form 8.1a (ESP) contains the following power supply cost information for all load Applicant serves in California:

1. Applicant's historical and projected annual power supply costs (\$ x 1000) for bilateral contracts.
2. Applicant's historical and projected annual power supply costs (\$ x 1000) for residual market transactions.
3. Applicant's historical and projected annual total power supply costs (\$ x 1000) for bilateral contracts and residual market transactions combined.

The period covered by the information contained in *Form 8.1a(ESP)* is from **2021 through 2034**, the last year in which Applicant currently has load under contract.

**2. REQUEST for CONFIDENTIAL DESIGNATION OF FORMS:**

**A. Form 7.1: Confidential Data Request**

Applicant requests that **ALL** information contained in Form 7.1 for years 2023 through 2028 be designated as confidential for **three calendar years** including the reporting year, i.e., to December 31, 2026.

**B. Form 8.1a (ESP): Confidential Data Request**

Applicant also requests that the information for the year 2021 contained in Form 8.1a(ESP) be designated as confidential for **one calendar year**, i.e., to December 31, 2024.

In addition, Applicant requests that the information for the years 2022-2034 contained in Form 8.1a(ESP) be designated as confidential for **three calendar years**, i.e., to December 31, 2026.

**3. FOUNDATIONS for CONFIDENTIAL DESIGNATION:**

**A. Form 7.1:**

Section 2505(a)(4) of the Commission's regulations provides that an application for designation of confidential records will be granted if the information for which the applicant is seeking a confidential designation is "substantially similar to information that was previously deemed confidential by the Commission."

On February 9, 2005, Applicant submitted its responses to the Commission's Demand Forecast data requests for the 2005 IEPR. Applicant's responses included the following Demand Forecast forms:

- Form 1.1 – Retail Sales of Electricity By Sector
- Form 1.3 – Coincident Peak Demand By Sector
- Form 2.4 – Customer Count and Other Forecasting Inputs

The information contained in those forms included Applicant's historical and forecast annual electricity sales (MWh), peak demand (MW), customer counts, and average annual growth rate (%) for each category of data.

At the time Applicant submitted Forms 1.1, 1.3 and 2.4, it submitted an application to the Executive Director requesting that the information reported in the forms be designated as confidential on the grounds that it was "trade secret" information.

By letter dated March 9, 2005, the Executive Director granted confidentiality for the geographic-level information reported by Applicant in forms 1.1 (retail sales in MWh) and 1.3 (peak load in MW), and for all of the information in Form 2.4 (customer counts). The Executive Director found that Applicant had made a reasonable argument for classifying this information as confidential "since it could provide [Applicant's] competitors with a competitive advantage if made public." That is, it was trade secret information. The Executive Director's grant of confidentiality was for a period of three years.

Subsequently, on February 2, 2007, Applicant submitted its responses to the Commission's Demand Forecast data requests for the 2007 IEPR. Applicant's responses included the following Demand Forecast form:

- Form 6 – ESP Report of Loads and Resources Under Contract

The information contained in Form 6 included Applicant's historical and forecast annual electricity sales (MWh), peak demand (MW), customer counts, and average annual growth rate (%) for each category of data.

At the time Applicant submitted Form 6, it submitted an application to the Executive Director requesting that the information reported in the form be designated as confidential on the grounds that it was "trade secret" information.

By letter dated March 1, 2007, the Executive Director granted confidentiality for all of the information reported by Applicant in Form 6 (retail sales, peak load, customer counts, and average growth rate (%) for each category of data). The Executive Director found that Applicant had made a reasonable argument for classifying this information as confidential since "[t]he information contained on this form constitutes a trade secret, and would place [Applicant] at a competitive disadvantage if disclosed." The Executive Director's grant of confidentiality was for a period a three years, i.e., to December 31, 2009.

The Demand Forecast information set forth in Form 7 for which Applicant is seeking a confidential designation is substantially similar to the Demand Forecast information that was previously granted confidentiality as discussed above. Moreover, all pertinent facts and circumstances remain unchanged from Applicant's previous confidentiality application.

**B. Form 8.1a (ESP):**

Section 2505(a)(4) of the Commission's regulations provides that an application for designation of confidential records will be granted if the information for which the applicant is seeking a confidential designation is "substantially similar to information that was previously deemed confidential by the Commission."

On November 24, 2004, Applicant submitted its responses to the Commission's Retail Electric Price data requests for the 2005 IEPR. Applicant's responses included the following Retail Electric Price forms:

- Form 3.a — Actual and forecasted annual energy purchases (cost and MWh) for each category of generation and in total for 2003-2016.
- Form 3.b — Actual and forecasted annual electricity sales and revenue requirements for each customer class and in total for 2003-2016.
- Workpapers for Forms 3.a and 3.b — Supporting data, including a description of the method used by Applicant to estimate electricity sales and distribution revenues among customer classes.

At the time these forms and workpapers were submitted, Applicant submitted an application to the Executive Director requesting that all of the information contained therein be designated as confidential. Subsequently, the Executive Director partially granted the confidentiality application of Applicant.

Specifically, the Executive Director denied confidentiality for a limited set of 2003 data due solely to the pending release of the same 2003 data by the Energy Information Agency ("EIA"): total power purchases (MWh), total retail sales (MWh), and total revenues. However, with regard to all of the other information contained in the forms and workpapers, the Executive Director determined that the information should be kept confidential "Because [ESPs] typically compete by price, specific information on recent and forecast sales and revenues that is not otherwise public could provide advantage to your competitors." (*See* Docket 04-IEP-1D, Letter from CEC to Gregory Klatt "Re: Application for Designation of Confidentiality for Retail Electricity Price Forecast Data," Dec. 23, 2004; *see also* Letter from CEC to Gregory Klatt "Re: Application for Executive Director's Reconsideration of Initial Denial of Designation of Confidentiality for Electricity Retail Price Forecast Data," Apr. 20, 2005.

Accordingly, confidentiality was provided for three (3) years for the following information:

- Annual power purchases (MWh) by source
- Annual total power purchases (MWh) (except 2003)
- Annual cost of power, by source and total
- Annual cost of non-generation services, by type of service and total
- Annual retail sales (except 2003)
- Revenues from retail sales by customer class
- Total revenues (except 2003) In addition, confidentiality was granted for the information contained in Applicant's supporting workpapers, including the description of the method used by Applicant to estimate retail sales and revenues.

Subsequently, on March 20, 2007, Applicant submitted its responses to the Commission's Retail Electric Price data requests for the 2007 IEPR. Applicant's responses included the following Retail Electric Price forms:

- Form 1 (ESP) — Actual and forecasted annual energy purchases (cost and volume) for each category of generation and in total for 2003-2016.
- Form 4 (ESP) — Actual and estimated annual cost of wholesale power purchased through contracts for 2004-2011 (renewables contracts, other types of bilateral contracts, and annual totals), and associated pricing factors (natural gas price indexes and weighted averages of other pricing factors).

The cost information contained in Form 1—cost of power from bilateral contracts and residual market transactions—was substantially similar to cost information provided for the 2005 IEPR in Form 3.a that was granted confidentiality (cost of power by source, including bilateral contracts and spot market purchases).

The cost information contained in Form 4—cost of power purchased through renewables contracts and other types of bilateral contracts—was also substantially similar to cost information provided for the 2005 IEPR in Form 3.a that was granted confidentiality (cost of power purchased by source, including renewables and bilateral contracts).

At the time Applicant submitted Forms 1 and 4, it submitted an application to the Executive Director requesting that the information reported in the forms be designated as confidential on the grounds that it was "trade secret" information.

By letter dated April 6, 2007, the Executive granted confidentiality for the information reported by Applicant in Forms 1 and 4. The Executive Director found that Applicant had made a reasonable argument for classifying this information as confidential: "The information contained on the forms submitted by [Applicant] constitutes a trade secret and would place [Applicant] at a competitive disadvantage if disclosed."

The Executive Director granted confidentiality for information for the year 2006 for one calendar year, i.e., to December 31, 2007, and granted confidentiality for information for the years 2007-2011 for three calendar years, i.e., to December 31, 2009.

The power supply cost information set forth in Form 8.1a(ESP) for which Applicant is seeking a confidential designation is substantially similar to the Retail Electric Price information that was previously granted confidentiality as discussed above. Moreover, all pertinent facts and circumstances remain unchanged from Applicant's previous confidentiality application. Accordingly, the Commission should grant this application.

**4. AGGREGATION of DATA:**

Applicant has no objection to the forecast information submitted by Applicant being made public if first aggregated with the similar data reported by all ESPs, as provided in the Final Demand Forecast Forms and Instructions.

In addition, Applicant has previously reported the historical information for the period of 2019-2021 contained in Form 8.1a(ESP) to the Energy Information Agency ("EIA"), aggregated at the statewide level, and the EIA has released or will soon release that information to the public. Also, Applicant has no objection to the forecast information submitted by Applicant being made public if first aggregated with the similar data reported by all ESPs as provided in the Final Demand Forecast Forms and Instructions.

**5. DISCLOSURE of DATA:**

DEB has not disclosed any of the information contained in Section 1(b) 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. In fact, all DEB employees, officers and directors are required to maintain the confidentiality of information entrusted to them by DEB or its customers, suppliers, business partners or others in the course of conducting business with the Company, except when disclosure is authorized or legally mandated.

**6. ATTESTATION:**

Declared under penalty of perjury that the aforesaid is true of my knowledge, except as to matters that are stated on information or belief, and to those matters, I believe them to be true.

Dated: July 3, 2023

*Barbara Farmer*

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Barbara Farmer  
Regulatory Reporting Analyst  
Direct Energy Business, LLC  
an NRG Energy, Inc. company