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Project Title:	Power Source Disclosure Program - 2022
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Document Title:	Direct Energy Business, LLC's Confidentiality Request for the Power Source Disclosure Program - 2022 Reporting
Description:	Confidentiality Request
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**APPLICATION FOR CONFIDENTIAL DESIGNATION
Direct Energy Business, LLC
Power Source Disclosure Annual Report (Year 2022)**

Attachment 1

DEB requests that the following information remain confidential, as also indicated by the orange highlighted cells on the Excel worksheet:

Form	Information to be held confidential
PSDP Schedule 1	<ul style="list-style-type: none"> • 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:
PSDP Schedule 2	<ul style="list-style-type: none"> • Total Unbundled RECs in cell E9:
PSDP Schedule 3	<ul style="list-style-type: none"> • Total and Renewable Specific Purchases: Percent of Total Retail Sales in cells C13:C22 and Other C23; • Total Unspecified Power MWh in cell B24: • Total Percentage Unspecified Power in cell C24 • Total Net Purchases MWh in cell B25: • Total Retail Sales in cell C27: • Total Percentage of Retail Sales Cover by Retired Unbundled RECs in cell C31:

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Attachment 2

DEB requests that the identified information be kept confidential until December 31, 2023. This specific term is requested to align the protection of data provided by the California Energy Commission (“CEC”) with the protection of data provided by the California Public Utility Commission’s (“CPUC”) confidentiality program.

DEB’s power source information should be kept confidential because: (1) the specificity of this information is not otherwise publicly available or readily discoverable; (2) a summary of DEB’s very recent wholesale and retail activities is market sensitive and constitutes trade secrets; and (3) releasing DEB’s confidential commercial information would result in loss of competitive advantage in the wholesale and retail marketplaces relative to DEB’s ability to negotiate future contracts for the purchase or resale of energy and/or capacity at wholesale, or negotiation of contracts with retail customers.

Maintaining the confidentiality of data until December 31, 2023 is appropriate because the data is expected to retain validity and market value through that period, and because any lesser period would undermine existing protection of the same or substantially similar data by other regulators or market entities, including the CPUC, the California Air Resources Board and the California Independent System Operator (“CAISO”). DEB has also fashioned this request to reflect the scope of protection provided to energy service provider (“ESP”) data in CPUC Decision (“D.”) 0606-066, Appendix 2 (“ESP Matrix”) and related modifications made in D.08- 04-023, in an effort to have consistency across California energy agencies.¹

¹ While DEB understands and acknowledges that the confidentiality rules granted by the CPUC and the CEC are different in some respects, DEB seeks to maintain consistency in the data it makes publicly available. Consistency also prevents DEB from inadvertent disclosures of confidential information.

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Attachment 3(a)

The California Public Records Act exempts “trade secrets” from public disclosure,

including “any formula, plan, . . . production data, or compilation of information . . . , which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service . . . and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.”² Under the California Evidence Code, information that is commercially sensitive is also considered a “trade secret.”³ CEC regulations provide for information to be designated as confidential if such information “contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage.”⁴

The information identified in Attachment 1(b) contains trade secrets or otherwise commercially sensitive data. Disclosing these trade secrets and commercially sensitive data would cause DEB loss of a competitive 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 (“IOUs”), DEB has taken reasonable steps to preserve information on its retail and wholesale market positions in strict confidence. The data identified in Attachment 1(b) should be protected for the requested period because the information is commercially sensitive, not publicly available, and is otherwise unknown to those outside of DEB and the entities with which DEB enjoys trusted business relationships. The public interest in nondisclosure clearly outweighs the public interest in disclosure insofar as the release of DEB’s commercial data could be used to directly or indirectly determine DEB’s market position and procurement strategy to the detriment of DEB and its customers.⁵

Accordingly, DEB requests that all of the information described in Attachment 1(b), and any related, supporting data that may be provided pursuant to a subsequent CEC request, be designated as confidential.

² [Cal. Gov.](#) Code § 6254.7(d).

³ Cal. Evid. Code § 1060; Cal. Civ. Code § 3426.1(d).

⁴ Tit. 20, Cal. Code Regs., § 2505(a)(1)(D).

⁵ See [Cal. Gov.](#) Code § 6255(a) (establishing balancing test).

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Attachment 3(b)

DEB would be harmed by public disclosure of the information identified in Attachment 1(b) because the information reflects DEB's historical retail load for the year 2022. If disclosed, this information could be used to directly or indirectly 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.

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Attachment 4

DEB has considered whether it would be possible to aggregate or mask the information identified in Attachment 1(b), and has concluded that it could support the aggregation of DEB- specific information with similar information from all other ESPs and solely disclosed on a statewide aggregated basis. DEB believes that disclosure of DEB-specific data of the types collected here, even if aggregated on a statewide basis but specific to DEB, could lead to the disclosure of DEB's wholesale and retail market positions and thereby result in harm to DEB. Given the degree of competition between ESPs, and between ESPs and IOUs, DEB asserts that any ESP-specific listing of data by utility territory would result in disclosure of confidential data.

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Attachment 5

DEB has not disclosed any of the information identified in Attachment 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.