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<b>Project Title:</b>	Load Management Standards Implementation
<b>TN #:</b>	256217
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May 7, 2024

**Via Email**

Maren Wenzel  
Silicon Valley Clean Energy Authority  
333 W. El Camino Real, Suite 330  
Sunnyvale, CA 94087  
[maren.wenzel@svcleanenergy.org](mailto:maren.wenzel@svcleanenergy.org)

**Application for Confidential Designation for Load Management Standards  
Implementation  
Docket No. 23-LMS-01**

Dear Maren Wenzel:

The California Energy Commission (CEC) has received Silicon Valley Clean Energy Authority's (applicant) Application for Confidential Designation, dated April 1, 2024 (TN 255412) covering the following (LMS Plan):

- Section III. Rates and Programs to Support Load Management Goals, A. Existing Rates
- Section III. Rates and Programs to Support Load Management Goals, B. Existing Programs
- Section VII. Results, A. Cost Effectiveness
- Section VII. Results, C. Technological Feasibility Evaluation
- Section VIII. Marginal Cost Rates Implementation

The applicant is requesting that the LMS Plan be kept confidential for a period of three years, until April 1, 2027. The applicant states that the length of time is needed to ensure that the applicant's contracted load supply, estimated load impacts, actual costs, projected costs, and projected revenues in its LMS Plan remains secure from market participants that could make competitive use of this information to the detriment of the applicant, the applicant's ratepayers, and the electricity market as a whole. Further, the applicant asserts that three years is consistent with how the CEC has treated similar information.

An application for confidential designation 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 authorize the Commission to keep the record confidential."

## **DISCUSSION**

The applicant seeks confidentiality on the basis of (1) trade secrets, (2) publicly entity designation, and (3) balancing tests.

### **Trade Secrets**

A trade secret may include, but is not limited to, any process, compound, production data, or compilation of data that meet the following requirements: “(1) it is not patented, (2) it is known to only certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and (3) it gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.” (Gov. Code, § 7924.510(f)).

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, §§ 7927.705(k), 7930.005, 7930.205; 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, §§ 7927.705, 7930.005, 7930.205; 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 does not specifically address the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D), but the applicant argues that public disclosure of the information set forth in the LMS Plan would give suppliers and competitors an advantage that would result in direct financial harm to the applicant.

### **Public Entity Designation**

The applicant further argues for confidentiality under California Code of Regulations Section 2505(b) as a local agency. Under California Code of Regulations, section 2505(b), the CEC shall designate the requested information confidential when the applicant seeks confidentiality as a federal, state, regional, or local agency or state-created private entity, which possesses information pertinent to the responsibilities of the CEC, that has been designated by applicant as confidential under the Public Records Act, or the Freedom of Information Act.

The CEC has previously recognized the applicant's claim of confidentiality under this regulation (TN 247895).

### **Balancing Test**

Lastly, the applicant states that the LMS Plan should be kept confidential under California Government Code Section 7922.000, which permits the protection of information where the public interest in nondisclosure clearly outweighs the public interest in disclosure. The applicant states the LMS Plan is highly commercially sensitive, not publicly known, and if revealed could cause significant harm to load serving entities, like the applicant. Such information, if disclosed, would reveal projected customer load, actual program costs, projected program costs, and projected revenues. The disclosure of this information could impact the energy and capacity markets in California and could increase the costs of implementing the programs described in the LMS Plan.

Under the balancing test, the public interest in preventing significant harm to load serving entities and protecting the energy and capacity markets in California clearly outweighs the public interest in disclosing this information.

### **Executive Director's Determination**

Although the applicant did not set forth the necessary information for an argument under trade secrets, the applicant has made a reasonable claim that the LMS Plan can be maintained as confidential as a public entity and under the balancing test consideration. Confidentiality is granted for a period of three years.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, 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 California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have questions, please email [confidentialityapplication@energy.ca.gov](mailto:confidentialityapplication@energy.ca.gov).

Sincerely,



Drew Bohan  
Executive Director