

DOCKETED

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June 20, 2024

Via Email

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**Application for Confidential Designation: Bear Valley Electric Service, Inc.
Docket No. 24-PSDP-01**

Dear Andrew B. Brown:

The California Energy Commission (CEC) has received an application for confidential designation from Bear Valley Electric Service, Inc. (applicant), docketed June 12, 2024 (TN 256814). The applicant requests confidential designation for the following data:

- PSD Schedule 1
 - Retail Sales (MWh) in cell N7
 - Net Specified Procurement (MWh) in cell N8
 - Unspecified Power (MWh) in cell N9
 - Net Specified Natural Gas in cell N11
 - GHG Emissions in cell N14
 - Facility Name in cell A37
 - EIA ID in cell G37
 - Gross MWh Procured in cell H37
 - Net MWh Procured in cell J37
 - Adjusted Net MWh Procured in cell K37
 - GHG Emissions Factor in cell L37; and
 - End Users Other Than Retail Sales in cells B53:B54
- PSD Schedule 3
 - Adjusted Net Procured (MWh) in cells B21, B24, B25
 - Total Retail Sales in cell C27; and
 - Percentage of Retail Sales Covered by Retired Unbundled Renewable Energy Credits (REC) in cell C31

The applicant asserts the data contains trade secret and proprietary information which is not made public by the applicant and that the data is considered confidential by the California Public Utilities Commission (CPUC). The applicant states the data can be aggregated on a state-wide basis 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 Commission to keep the record confidential."

Discussion

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, 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 competitive 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 the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) by stating:

- 1) *The specific nature of the competitive advantage* – The information can be used to determine the applicant's market position directly or indirectly to the detriment of the applicant and its customers.
- 2) *How the advantage would be lost* – Disclosure of the information may result in loss of competitive advantage in the wholesale and retail marketplaces relative to the applicant's ability to negotiate future contracts for the purchase or resale of energy and/or capacity at wholesale.
- 3) *The value of the information to the applicant* – The public release of the information, particularly to competitors and existing and potential sellers, may result in a loss of competitive advantage for the applicant in the wholesale and retail markets, and may result in disclosure of information about internal operating practices.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The applicant states that it has not disclosed any of the information to anyone other than its employees, attorneys and consultants

working with the Company, or government agency employees or employees of the CAISO subject to confidentiality protection.

The applicant has not made a reasonable claim that the greenhouse gas emissions information, including GHG Emissions in cell N14 and the GHG Emissions Factor in cell L37 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 greenhouse gas emissions. Finally, California Government Code section 7924.510 states all air or other pollution monitoring data, including data compiled from stationary sources, are public records.

Likewise, the applicant has not made a reasonable claim that the Facility Name in cell A37 or the EIA ID in cell G37 can be designated as confidential. 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 applicant has failed to show that this publicly available information is not readily discoverable.

The applicant has made a reasonable claim that the energy data is exempt as trade secrets. From PSD Schedule 1, this includes: Retail Sales (MWh) in cell N7; Net Specified Procurement (MWh) in cell N8; Unspecified Power (MWh) in cell N9; Net Specified Natural Gas in cell N11; Gross MWh Procured in cell H37; Net MWh Procured in cell J37; Adjusted Net MWh Procured in cell K37; and End Users Other Than Retail Sales in cells B53:B54. From PSD Schedule 3, this includes: Adjusted Net Procured (MWh) in cells B21, B24, B25; Total Retail Sales in cell C27; and Percentage of Retail Sales Covered by Retired Unbundled Renewable Energy Credits (REC) in cell C31. The application requests the data be confidential until June 6, 2025. 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 June 6, 2025. The data may be released before June 6, 2025, if applicant-specific information is aggregated on a state-wide basis with other similar data. Confidentiality is denied for all greenhouse gas emissions information, for the Facility Name, and for applicant's EIA ID.

Note that load serving entities provide quarterly annual retail sales under California Code of Regulations, title 20, 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.

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.

You may request confidentiality for similar data in a future annual report 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.

Sincerely,

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

Drew Bohan
Executive Director