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August 21, 2024

Via Email

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**Application for Confidential Designation for Data in Power Source
Disclosure Program Annual Report
Docket No. 24-PSDP-01**

Dear Seth Hilton:

The California Energy Commission (CEC) has received Shell Energy North America (US), L.P., d/b/a Shell Energy Solutions' (applicant) application for confidential designation (TN 257758), filed July 16, 2024, covering the following data contained in the Power Source Disclosure Annual Report:

- PSD Schedule 1 (MWh procured, GHG emissions data): Lines 7-14 (Column N), Lines 18-334, 337-411, 417-420 (Columns H-N)
- PSD Schedule 2 (Total Retired Unbundled RECs): Lines 9, 12-25 (Column E)
- PSD Schedule 3 (Adjusted Net Procured MWh): Lines 13-25 (Column B)
 - Total Retail Sales: Line 27 (Column C)
 - ACS Procurement Calculator: Lines 8, 23 (Column A)
 - Resource-Specific Procurement from ACS: Lines 8-18, 23-33 (Column E)

The applicant is an Electric Service Provider. The applicant states that consistent with various California Public Utility Commission decisions, the data should be kept confidential until December 31, 2024, and that the data may be disclosed if aggregated with data from other load-serving entities. The applicant asserts the data contains trade secret and proprietary information.

Confidentiality Claims

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 reasonable standard. The applicant must 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, §§ 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.

Discussion

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 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 would place the applicant at a competitive disadvantage in the wholesale and retail electricity markets, as well as harm customers, by increasing the applicant's power procurement costs and the costs paid by its customers.
3. *The value of the information to the applicant* – The information is very valuable 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 restricts access to the information to the applicant's employees and agents who agree to maintain the information on a confidential basis. The applicant has not revealed the confidential information to any individuals other than the applicant's employees and attorneys, as well as applicable regulatory agencies (e.g., the CPUC) that have required disclosure, subject to confidentiality protections.

The applicant has made a reasonable claim that the energy data is exempt as trade secrets. The application requests the data be confidential until December 31, 2024.

Executive Director's Determination

For the reasons stated, the energy data is granted confidentiality until December 31, 2024. The data may be released before December 31, 2024, if applicant-specific information is aggregated with information from all other statewide energy service providers.

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.

Be advised that under the California Code of Regulations, title 20, 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 confidential records is issued by the CEC's chief counsel. Under the California Code of Regulations, title 20, section 2507, the executive director may disclose records, or release

records previously designated as confidential, in certain circumstances. The procedures for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set forth in the California Code of Regulations, title 20, sections 2506-2508.

You may request confidentiality for similar data in a future annual report without applying 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 flourish extending to the right.

Drew Bohan
Executive Director