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August 23, 2024

Via Email

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

Dear Andy Anderson:

The California Energy Commission (CEC) has received Pilot Power Group, LLC's (applicant) application for confidential designation (TN 258082), filed July 26, 2024, covering the following data contained in the 2023 Power Source Disclosure Annual Report:

- PSD Schedule 1
 - Retail Sales MWh and Specified/Unspecified Procurement MWh total (Cells N7:N15)
 - Directly Delivered Renewable MWh Purchases (Cells H18:K33)
 - Firmed-And Shaped Import MWh Purchases (Cells H36:K38)
 - End Uses Other Than Retail Sales (Cells B50:B53)
- PSD Schedule 2
 - Total Retired Unbundled RECs (Cell E9)
 - Retired Unbundled RECs: Total Retired MWh (Cells E12:E15)

PSD Schedule 3

- Adjusted Net Procured MWh (Cells B13:B25)
- Total Retail Sales MWhs (Cell 27)

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 July 29, 2025, and that the data may be disclosed if aggregated with data from other load-serving entities solely on a statewide aggregated basis. The applicant asserts the data contain trade secrets 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 foreclosing favorable commercial opportunities.
3. *The value of the information to the applicant* – The information is very valuable to the applicant. The release of this information will 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, or negotiation of contracts with retail customers.
4. *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The applicant has not revealed the confidential information to any individuals other than the applicant's employees, as well as applicable government agency employees or employees of CAISO subject to confidentiality protection.

The applicant has made a reasonable claim that the energy data is exempt as trade secrets. The application requests the data be confidential until July 29, 2025.

Executive Director's Determination

For the reasons stated, the energy data is granted confidentiality until July 29, 2025. The data may be released before July 29, 2025, 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

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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