

DOCKETED

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September 11, 2024

Via Email

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

Dear Bryan White:

The California Energy Commission (CEC) has received Calpine Energy Solutions, LLC's (applicant) applications for confidential designation (TN 258768 and 258775), filed August 30, 2024, covering the following data contained in the 2023 Power Source Disclosure Annual Report:

- PSD Schedule 1
 - Unspecified Power Purchase Data (cell N9)
 - Total Retail Sales Information (cell N7)
- PSD Schedule 3
 - Total and Renewable Specific Purchases: Percent of Total Retail Sales (cells C13:C18 C20, C24:C25)
 - Unspecified Power (cell B24)
 - Total Retail Sales (cells B25 and C27)

TN 258768 is a duplicate application of TN 258775. 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, 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 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 specificity of the information is not otherwise publicly available or readily discoverable. The applicant has not revealed the confidential information to any individuals other than the applicant's employees, attorneys, and consultants working with the applicant, or government agency or CAISO employees.

The applicant has made a reasonable claim that the energy data is exempt as trade secrets and that the data remain confidential until December 31, 2025.

Executive Director's Determination

For the reasons stated, the energy data is granted confidentiality until December 31, 2025. The data may be released before December 31, 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 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.

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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