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November 06, 2024

Via Email

Greg Bass
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Calpine Energy Solutions, LLC Application for Confidential Designation of Confidential Records and Submittal of Electricity Planning Forms

Docket No. 23-IEPR-02

Dear Greg Bass

The California Energy Commission (CEC) has received Calpine Energy Solutions, LLC's (applicant) Application for Confidentiality filed October 24, 2024, (TN 259678) covering the following Electricity Resource Planning Forms:

- Form S-1 (CRATs): contains forecasted annual Peak Demand Calculations and annual Capacity Purchases, by utility service territory, for the years 2022-2023, using 2024 forecasted loads for 2024 forward
- Form S-2 (Energy Balance): contains expected annual Energy Demand and annual Bilateral contracted generation, by utility service territory, for the years 2022-2023, using 2024 forecasted loads for 2024 forward
- Form S-5 (Bilateral Contracts): contains detailed information about the applicant's physical supply arrangements and bilateral contact information for the years 2022-2023

The applicant states that the data identified in the forms is based on contracts the applicant has in place at the time of the Electricity Resource Plan's creation and is considered proprietary and confidential information. However, the applicant notes that the data may be publicly released if aggregated with other similar data.

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 applicant addresses the four elements necessary to establish a trade secret claim (Cal. Code Regs., tit. 20, § 2505(a)(1)(D)) for the accompanying information as follows:

- 1) *The specific nature of the advantage* – The information contained in the forms could provide significant insight into business strategies in a way that could harm the competitive situation of the applicant. The applicant states that the information could be used to determine the applicant’s historical and forecasted power and capacity needs, which in turn could be used by the applicant’s competitors.
- 2) *How the advantage would be lost* – Public disclosure of the information could be used by competitors to refine their business strategies and cause a competitive harm to the applicant. Further, the information could be used by the suppliers, to the applicant’s disadvantage when negotiating the price and terms of procurement transactions.
- 3) *The value of the information to the applicant* – The information is very valuable to the applicant. The applicant states that disclosure of the data would cause the applicant a loss of competitive advantage at several levels.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The data is not disclosed publicly, it is treated as

confidential by the applicant, and the applicant is not aware of any way in which this information could be legitimately acquired or duplicated by others.

The applicant has made a reasonable claim that the submitted information is exempt from disclosure as business proprietary or trade secrets.

Executive Director's Determination

For the reasons stated above, confidentiality is approved for the information submitted in TN 259678 for a period of three years.

Be advised that under title 20, California Code of Regulations 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 records is issued by the CEC's chief counsel. Under title 20, California Code of Regulations section 2507, 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 title 20, California Code of Regulations, sections 2506-2508.

If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director