

DOCKETED	
Docket Number:	11-RPS-01
Project Title:	Renewables Portfolio Standard
TN #:	260285
Document Title:	PacifiCorp Application for Confidential Designation of Information in RPS Certification Application
Description:	Application for confidential designation
Filer:	Jed Gibson
Organization:	Downey Brand LLP
Submitter Role:	Other Interested Person
Submission Date:	11/25/2024 4:22:54 PM
Docketed Date:	11/25/2024

November 25, 2024

Mr. Drew Bohan
Executive Director
California Energy Commission
715 P Street
Sacramento, CA 95814

Re: Application for Confidential Designation for RPS Certification Application

Dear Executive Director Bohan:

PacifiCorp d/b/a Pacific Power (PacifiCorp) submits this Application for Confidential Designation to protect certain information provided to the California Energy Commission (Commission) as part of its Renewables Portfolio Standard (RPS) Certification Applications for the Foote Creek II, III, and IV facilities.

1. Contact Information (20 CCR 1208.1).

Applicant Name: PacifiCorp
Phone Number: 971-242-6202
E-mail: Kieran.odonnell@pacificorp.com
Proceeding Name: N/A – RPS Certification Application
Docket Number: N/A – RPS Certification Application

2. Title, date, and description (including number of pages) of the information or data for which you request confidential designation. (20 CCR 1208.1)

RPS Certification Applications for Foote Creek II, Foote Creek III, and Foote Creek IV, dated 01/23/2024, as supplemented by the information provided in the Highly Confidential CEC RPS FC II-IV 80/20 calculation on tabs 1-3 provided on 11/12/2024, include renewable facility cost information provided as part of the RPS Certification Applications, as further described in Section 3, below. This confidential cost information is located in the Highly Confidential CEC RPS FC II-IV 80/20 calculation attachment on tabs 1-3 and submitted with the RPS Certification Application.

3. Specify the part(s) of the information or data for which you request confidential designation. (If the data is in charts or spreadsheets, highlighting is sufficient.) (20 CCR 2505(a)(1)(B))

All cost data related to the Foote Creek II, Foote Creek III, and Foote Creek IV facilities provided in the RPS Certification Applications as highlighted in the highly confidential CEC RPS FC II-IV 80/20 calculation attachment on tabs 1-3.

4. **State and justify the length of time the CEC should keep the information or data confidential. The term requested must be relevant to the stated basis for confidentiality. (20 CCR 2505(a)(1)(C))**

PacifiCorp requests that the confidential cost information be kept confidential through December 31, 2027. This requested confidentiality period is consistent with confidentiality protections provided by the California Public Utilities Commission (CPUC) as outlined in CPUC General Order 66-D and CPUC Decisions D.06-06-066, D.08-04-023, and D.21-11-029.

5. **State the provision(s) of the California Public Records Act or other law that allows the CEC to keep the information or data confidential and explain why the provision(s) apply to that material. (See Gov. Code, §§ 7920.000-7930.215.) (20 CCR 2505(a)(1)(D))**

The data requested to be kept confidential is commercially sensitive, trade secret information that is subject to protection from public disclosure pursuant to Government Code Section 6254.7(d). Specifically, the Public Records Act exempts “trade secrets” from public disclosure, including “any formula, plan, ... production data, or compilation of information..., which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.”¹ In addition, the California Uniform Trade Secrets Act (Cal. Civ. Code §§ 3426–3426.11) and the California Evidence Code (Cal. Evid. Code, § 1060) protect trade secrets from disclosure.

The cost information PacifiCorp seeks to protect includes specific prices PacifiCorp paid for its renewable facilities and constitutes a trade secret under the Public Records Act. This cost information is market-sensitive and highly confidential, and includes the prices PacifiCorp paid for wind generation facilities and various components of those facilities. If made public, such information would reveal to market participants, including PacifiCorp’s competitors and suppliers, the prices PacifiCorp paid for wind generation facilities and facility components, which would adversely affect PacifiCorp’s negotiation position for the procurement of renewable generation equipment as well as renewable energy, and would harm customers by disadvantaging PacifiCorp as it transacts in the energy development and supply markets. Disclosure of this information would place PacifiCorp at a competitive disadvantage in the wholesale and retail electricity markets and harm PacifiCorp’s customers, with no offsetting public interest benefit from disclosure of this information. Such disclosure, whether direct or indirect, could increase PacifiCorp’s power procurement and development costs and the costs paid by its customers.

Because disclosure of the highly sensitive cost information for the Foote Creek wind facilities would cause loss of a competitive advantage, this information constitutes a trade secret and

¹ Govt. Code § 6254.7(d).

commercially sensitive data, which is protected under the Public Records Act.² The Commission's regulations provide for such information to be kept confidential upon request pursuant to 20 CCR Section 2505(a)(1)(D). Based on this authority, PacifiCorp requests that the cost information identified herein be designated as and kept confidential.

6. **If the applicant believes that the information or data should not be disclosed because it contains trade secrets or its disclosure would otherwise cause a loss of a competitive advantage, the application also shall state: (20 CCR 2505(a)(1)(D))**

(a) the specific nature of that advantage,

The specific prices paid by PacifiCorp are highly confidential. Maintaining confidentiality of historic prices ensures PacifiCorp can meaningfully negotiate in the highly competitive energy and development markets.

(b) how the advantage would be lost,

Disclosing the cost information would allow other market participants, including PacifiCorp's suppliers, competitors, and other counterparties, to leverage such information to extract higher prices from PacifiCorp and increase costs for PacifiCorp's customers.

(c) the value of the information to the applicant, and

The cost information at issue is highly valuable and commercially sensitive for PacifiCorp, particularly given the competitive losses that PacifiCorp would experience if such information is disclosed.

(d) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The cost information is not publicly available and can not be acquired or duplicated by others.

7. **State whether the information or data can be disclosed if it is aggregated with other information or masked to conceal certain portions. State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why. (20 CCR 2505(a)(1)(E))**

Given the limited number of repowered RPS projects, PacifiCorp does not believe it would be possible to aggregate or mask the cost information with similar information from other repowered projects without leading to the disclosure of PacifiCorp's market sensitive cost information. As discussed above, such disclosure will place PacifiCorp at a competitive disadvantage and is likely to increase costs for PacifiCorp's customers. However, PacifiCorp believes that cost aggregation at a sufficient level, such as aggregating costs from all recent RPS-certified renewable facilities, would preclude market participants from ascertaining PacifiCorp-specific costs and avoid impacts to PacifiCorp's participation in the highly competitive energy

² Govt. Code § 6254.7(d); *see also* Evidence Code § 1060 and Civil Code § 3426.1(d).

and development markets. Any such aggregation or masking, however, must ensure that PacifiCorp-specific cost information cannot be determined.

8. **State how the information or data is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred. (20 CCR 2505(a)(1)(F.))**

PacifiCorp has not disclosed any of the information sought to be designated as confidential to anyone other than its employees, attorneys, and consultants working with PacifiCorp. PacifiCorp routinely keeps information of commercial value, like the confidential market sensitive information identified herein, confidential.

I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the applicant PacifiCorp.

Sincerely,

DOWNEY BRAND LLP



Jedediah J. Gibson

JJG

4516278.1