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| Project Title: | Renewables Portfolio Standard |
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| Document Title: | CEC Response to PacifiCorp's re-submitted Application for Confidentiality |
| Description: | N/A |
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December 20, 2024

Via Email

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**Application for Confidential Designation for PacifiCorp Renewables Portfolio
Standard Certification Applications for Foote Creek II, Foote Creek III, and Foote
Creek IV
Docket No. 11-RPS-01**

Dear Jedediah J. Gibson:

The California Energy Commission (CEC) has received an application for confidentiality from PacifiCorp (applicant) (TN 260285), docketed November 25, 2024, for the following information related to the applicant's Renewable Portfolio Standard Certifications application for the Foote Creek II, Foote Creek III, and Foote Creek IV facilities:

- PacifiCorp RPS Certification Application Information

The application states that the provided data should be designated confidential to protect market sensitive and trade secret information relating to renewable facilities costs. The application states the documents should be granted confidentiality under the California Public Records Act, referencing Government Code sections 7927.605(a), 7927.705, Evidence Code section 1060, and Civil Code section 3426.1(d).

Confidentiality Claims

A properly filed application for confidentiality shall be granted under 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, 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), provides 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) as follows:

- 1) *The specific nature of the advantage* – The submitted information contains market sensitive and trade secret cost information that is used by the applicant to negotiate future contracts.
- 2) *How the advantage would be lost* – Disclosure of this information would lead to the applicant's loss of a competitive advantage by enabling counterparties and industry competitors to gain economic value from its disclosure by negatively impacting applicant's negotiating positions. This negative impact to applicant's negotiating positions could also increase costs for applicant's customers.
- 3) *The value of the information to the applicant* – Facilities costs information has independent economic value from not being generally known to the public or applicant's competitors who can obtain economic value from its disclosure. Release of facilities costs information could negatively affect the applicant's market standing and negatively impact future contract negotiations and prices for applicant's customers.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information could not be legitimately acquired or duplicated by others. This information has not been shared outside of applicant personnel.

Executive Director's Determination

The applicant has made a reasonable claim that the specified portions of the power supply data can be maintained as confidential for a period of three years, through

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December 31, 2027. As such, the applicant's request for confidential designation is granted.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, 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 California Code of Regulations, title 20, sections 2506 through 2508.

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