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Los Angeles Department of Water & Power

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April 24, 2015

Robert P. Oglesby, Executive Director
California Energy Commission
1516 Ninth Street, MS-39
Sacramento, California 95814-5504

Dear Mr. Oglesby:

Subject: Application for Confidentiality Designation of Certain Data Included in the Electricity Resource Plans (Docket 15-IEPR-02) Submittal to the California Energy Commission (CEC) for the 2015 Integrated Energy Policy Report (IEPR)

The Los Angeles Department of Water and Power (LADWP or Applicant) requests that the CEC designate the highlighted data in the enclosed S-5 Form as confidential for the reasons identified below pursuant to Title 20, Division 2, Chapter 7, Article 2 of the California Code of Regulations. 20 C.C.R. §§ 2501 *et. seq*.

Applicant Name, Address, and Contact Information

Pjoy Chua
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1(a). Title, date, and description (including number of pages) of the information or data for which you request confidential designations. Information or data seeking a designation of confidentiality must be included with this application.

Electricity Resource Planning Form S-5, as submitted to the CEC on April 24, 2015. Applicant has identified 25 contracts containing confidential information.

Tab	Contract Name	Confidentiality items	Expiration Date(Contract) (Month & Year)
S-5 Linden Wind	Linden	Delivery Points; Firming Or Shaping; Transmission Contingent & Path	During the life of the plant
S-5 Milford I	Milford I	Delivery Points; Transmission Contingent & Path	Dec 2029
S-5 Milford II	Milford II	Delivery Points; Transmission Contingent & Path	Apr 2031
S-5 PPM Pebble Springs	PPM Pebble Springs	Delivery Points; Firming Or Shaping; Transmission Contingent & Path	Dec 2026
S-5 PPM Wyoming	PPM Wyoming	Delivery Points; Transmission Contingent & Path	June 2022
S-5 Willow Creek	Willow Creek	Delivery Points; Firming Or Shaping; Transmission Contingent & Path; Performance Requirements	Dec 2023
S-5 Windy Point	Windy Point II	Delivery Points; Firming Or Shaping; Transmission Contingent & Path	Jan 2030
S-5 Manzana	Manzana Wind	Delivery Points; Performance Requirements	Dec 2022
S-5 Moapa	Moapa Southern Pauite Solar	Delivery Points; Transmission Contingent & Path	June 2041
S-5 CMS3	Copper Mountain Solar 3	Delivery Points; Transmission Contingent & Path	Apr 2035
S-5 RE Cinco	RE Cinco	Delivery Points; Transmission Contingent & Path; Performance Requirements	July 2036
S-5 DC I	Don Campbell I Geothermal Energy Project	Delivery Points; Transmission Contingent & Path	Jan 2034
S-5 DC II	Don Campbell II Geothermal Energy Project	Delivery Points; Transmission Contingent & Path	Dec 2036
S-5 8min I	Springbok I Solar	Delivery Points; Transmission Contingent & Path; Performance Requirements	Dec 2041
S-5 Beacon Site 1	Beacon Solar site 1	Delivery Points	Dec 2041
S-5 Beacon Site 2	Beacon Solar site 2	Delivery Points	Dec 2041
S-5 Beacon Site 3	Beacon Solar site 3	Delivery Points	Dec 2041
S-5 Beacon 50	Beacon 50	Delivery Points	Dec 2041
S-5 Beacon Site 5	Beacon Solar site 5	Delivery Points	Dec 2041
S-5 Heber 1	Heber-1 Geothermal Energy Project	Delivery Points; Transmission Contingent & Path	Feb 2026
S-5 MWD Small Hydro	Metropolitan Water District of Southern California (MWD)	Delivery Points	Dec 2023
S-5 Bilateral Contract A	Hoover (DWP NO. 10032)	Transmission Contingent & Path	9/30/2017
S-5 Confidential Contract B	County of Los Angeles	Contract Name; Supplier/Seller; Fuel Type	12/5/2015
S-5 Confidential Contract C	UCLA	Contract Name; Supplier/Seller; Fuel Type; Notes	Sept 2013
S-5 Confidential Contract D	Gas Hedging Energy Purchase	Contract Name; Supplier/Seller; Delivery Points	6/30/2015

LADWP is requesting confidentiality for all cells shown with yellow fill on S-5 Form.

1(b). Specify the part(s) of the information or data for which you request confidential designation.

Applicant requests that all information highlighted in yellow on the S-5 Form be designated as confidential.

2. State and justify the length of time the Energy Commission should keep the information or data confidential.

Applicant requests that the yellow-highlighted data be designated as confidential by the CEC through the expiration date of each specific contract as indicated on each form and shown in the table above.

3(a). State the provision(s) of the public Records Act (Gov. Code, § 6250 et seq.) or other law that allows the Energy Commission to keep the

information or data confidential, and explain why the provision apply to that material.

When another state or local agency "possesses information pertinent to the responsibilities of the Commission that has been designated by that agency as confidential under the Public Records Act or the Freedom of Information Act, the Commission, the Executive Director, or the Chief Counsel may request, and the agency shall submit the information to the Commission without an application for confidential designation. The Commission shall designate this information confidential." 20 C.C.R. § 2502(b).

Applicant has identified 25 supply contracts that contain confidential data exempted from disclosure under state and federal law, including Government Code Sections 6254(c), 6254(e), 6254(k), 6254(ab), 6254.15, and 6255; Evidence Code Sections 1040, 1060 and 1061; Title 6, Chapter 1 of the United States Code Sections 131 and 133; and Title 18, Chapter 1, Part 388 of the Code of Federal Regulations, Section 388.112 and 388.113.

Applicant's confidential data relates to, among other things, the transmission and transportation of energy, which constitutes "critical energy infrastructure information." 18 C.F.R. §§ 388.113(c)(1); 18 C.F.R. § 388.112; 6 U.S.C. §§ 131, 133. Data regarding critical energy infrastructure information is deemed confidential and exempted from disclosure pursuant to Government Code Sections 6254(k) and 6254(ab). This exemption applies to information relating to NERC e-Tag data, which "contain information about where the power is sourced and delivered; the responsible parties in the receipt, delivery and movement of the power; the timing; and the volumes and specified details regarding which transmission paths are used."[1] The Federal Energy Regulatory Commission (FERC) treats this data as non-public information.[2]

Moreover, "[n]o member, officer, or employee of the [FERC] Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction." 18 C.F.R. § 366.2(e). NERC e-Tags are specifically identified as a type of information subject to this confidentiality restriction. 18 C.F.R. § 366.2(d). In a recent Final Rule, FERC stated that "the Commission will deem all e-Tag information made available to the Commission

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[1] Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act, 143 F.E.R.C. P61,054, 61 (FERC 2013) citing Order No. 768, FERC Stats. & Regs. P 31,336 at P 156.

[2] 141 FERC ¶ 61,235 (Issued Dec. 20, 2012) n.15 citing Availability of E-Tag Information to Commission Staff, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,675 (2011) (E-Tag NOPR)(emphasis added).

pursuant to Order No. 771 as being submitted pursuant to a request for privileged and confidential treatment under 18 CFR 388.112."[3]

In addition, Applicant's confidential data is also exempted from disclosure as "official information" under Evidence Code Section 1040 because the information was acquired in confidence from Applicant's counterparties under the express terms of Paragraph 30 of the Western System Power Pool (WSPP) agreement. Gov't Code § 6254(k); Evid. Code § 1040. The data obtained from the WSPP agreements relating to the relating to LADWP's utility systems development that were obtained in confidence are exempted from disclosure pursuant to Government Code Section 6254(e). Furthermore, the data is otherwise exempted because it involves Applicant's confidential proprietary information. Gov't Code § 6254(k); Evid. Code §§ 1060-61; Gov't Code § 6254.15. In addition, any personnel data, such as identifying electricity traders, is exempted under Government Code Section 6254(c).

Furthermore, Government Code Section 6255 and Evidence Code Sections 1040(b)(2) and 1060 all apply a balancing test to assess whether data should be nonpublic information. Here, the public interest served by not disclosing the confidential data outweighs the public interest in disclosure. The express terms of the WSPP agreement require that the terms of any transaction and all information exchanged between parties remain confidential. (*See* WSPP ¶ 30). Applicant's failure to comply with its contractual commitments would not only expose the Applicant to a potential breach action, but could also result in a refusal on the part of the counterparties to conduct business with the Applicant. This would likely result in an increase in electricity prices and transmission costs. Furthermore, the FERC views critical energy infrastructure information as exempt under the Freedom of Information Act (FOIA).

Finally, Applicant anticipates that the CEC – another governmental entity – will not disclose the information identified as confidential pursuant to Government Code Section 6254.5(e). The CEC should expressly limit access to the confidential information to CEC staff members authorized to receive such confidential information and the information should only be used for purposes which are consistent with existing law. If the CEC plans to disclose the information then the CEC will notify Applicant well in advance of the disclosure, based on any CPRA request or otherwise, for the information.

3(b). Discuss the public interest in nondisclosure of the material submitted for a confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please

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[3] 142 F.E.R.C. P61,181, 61 (FERC 2013).

state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The contracts included in this request allow for the safe and reliable transmission, transportation, and delivery of renewable energy and its attributes (and non-renewable energy). Disclosure of the counterparty and unit identification information without a request for confidentiality may place the Applicant in violation of federal law and the terms and conditions of its WSPP agreement. Furthermore, the nondisclosure of the data is in the public interest because it helps the disclosure of information that could be useful in helping a person plan an attack on critical infrastructure.

4. State whether the information or data can be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why.

The information may be disclosed if it is aggregated with other information to a degree that it conceals the identified confidential information in the contracts.

5. State how the material is kept confidential by the applicant and whether it has even been disclosed to a person other than an employee of the applicant.

The applicant does not make critical infrastructure information or related NERC e-Tag data publicly available. The contracts contain confidentiality provisions which the counterparty has asked to be honored. The contracts are only available to employees of the City of Los Angeles Department of Water and Power and the counterparties.

I certify under penalty or perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge. I also certify that I am authorized to make the application and certification on behalf of the Los Angeles Department of Water and Power.

Sincerely,

Pjoy Chua
Manager of Regulatory Standards and Compliance

MP:jm
Enclosures
c/enc: Mr. Minh Pham