

DOCKETED

Docket Number:	16-RPS-02
Project Title:	Appeal by Los Angeles Department of Water & Power re Renewables Portfolio Standard Certification Eligibility
TN #:	213460
Document Title:	Application for Designation of Confidential Records 16-RPS-02 08302016
Description:	Confidential request for Heat Rates and Metered Data.
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Organization:	LADWP
Submitter Role:	Applicant
Submission Date:	8/31/2016 6:04:37 PM
Docketed Date:	9/1/2016

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August 30, 2016

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California Energy Commission
1516 Ninth Street, MS 4
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To Energy Commission Docket Unit:

Subject: **Application for Designation of Confidential Records for 16-RPS-02.**
Generator Heat Rates, Generation and Metered Data for RECs showing monthly gas deliveries per in-basin facility should be treated automatically as confidential data when submitted to the California Energy Commission for any purpose, including certification of LADWP's biomethane claims in support of its Renewable Portfolio Standard in the CEC Proceeding Number 16-RPS-02.

The Los Angeles Department of Water and Power (LADWP or Applicant) is applying for the automatic designation of confidential records related to:

1. A range of generator heat rates (Heat Rates) and
2. Metered data used for electrical generation from each in-basin gas facility (Metered Data) showing monthly gas deliveries from the Southern California Gas Company (SoCalGas) to each of LADWP's in-basin gas facilities.

For convenience, the records are collectively referred to as "Confidential Record(s)."

The Confidential Records are provided to the California Energy Commission (CEC) as part of the CEC's proceeding, 16- RPS-02, which includes LADWP's administrative appeal to the CEC to certify LADWP's in-basin facilities using Biomethane. This application is submitted in response to a clarification from the Hearing Officer, Paul Kramer, in 16-RPS-02¹, to adhere to the CEC's confidential application process for entire documents that are confidential and redacted portions of documents that are related to the proceeding and confidential. Here, the Heat Rates and Metered Data are entirely confidential, so will be submitted in 16-RPS-02 under seal.

LADWP seeks the confidential designation of the Confidential Records because Heat Rates are already confidential as determined by the CEC just this past summer.² Furthermore, the Metered Data is directly related to the Heat Rate information that

¹ TN# 212921, docketed 8-23-16.

² TN# 212337, docketed 7-18-16

LADWP submitted to the CEC and for which the CEC already granted confidentiality because it would provide information to allow a third party to approximate the heat rate ranges. Also, for LADWP's confidential application for the Heat Rates, as well as for Metered Data, the basis for maintaining confidentiality has not changed; therefore, the factors that previously justified the confidential status continue to justify its confidential treatment today.³

Applicant Name, Address, and Contact Information

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"When another federal, state, regional, or local agency or state-created private entity, such as the California Independent System Operator, 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 CCR §2505 (b).

LADWP, a local agency, has designated the (1) the heat rate ranges, and (2) the metered data used for electrical generation from each in-basin gas facility which shows monthly gas deliveries to each of LADWP's in-basin gas facilities, submitted with this application, are confidential under the Public Records Act. Therefore, the Commission shall designate this information confidential.

In addition to this designation, LADWP is providing further support for designating the information as confidential, as detailed herein.

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.

³ A determination requested by the Hearing Officer. TN# 212921, docketed 8-23-16.

1. Heat Rates. The document is entitled Confidential Heat Rate Range for LADWP Generating Facilities, with a document date of June 2, 2016, and is a one page document, which includes heat rate ranges for the Applicant's power generation facilities in the Los Angeles basin, including those at Haynes, Scattergood, and Valley. It has been identified as Exhibit 355 in the 16-RPS-02 proceeding. (Bates No. LA001734).
2. Metered Data. The information is found in a series of spreadsheets combined into one, each entitled with the name of LADWP's in-basin generating facility, i.e., Scattergood Generating Facility, Haynes Generating Facility, and Valley Generating Station. The spreadsheets include the name of the entity that sold the biomethane to LADWP, i.e., Atmos Energy Marketing LLC (Atmos), and Shell Energy North America (Shell). The spreadsheets for Shell are further identified by the year the contracts became effective, one in 2009 and the other in 2011. They have been identified as Exhibits 348 to 350 in the 16-RPS-02 proceeding (Bates Nos. LA001717 to LA001721).

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

The information itself and all the information related to the Heat Rates and the Metered Data to each of LADWP's in-basin electrical generating facilities at Haynes, Scattergood, and Valley from January 2011 through July 2014 shall be included in the Confidential Record.

1(c). State and justify the length of time the Energy Commission should keep the information or data confidential.

The information in the Confidential Record must be kept confidential indefinitely. The Applicant generates power from its in-basin power plants continuously and regularly to provide electricity to its customers. The heat rates will not fluctuate unless a particular unit is completely replaced. All the generating units at each power plant have a life expectancy in excess of 30 years.

Moreover, heat rates are part of market-sensitive information and are described as non-public information by federal law 18 CFR 35.36(a)(8). Generator heat rates provide "detailed design information about . . . existing critical infrastructure that . . . relates details about the production [and] generation" of energy, so it would be considered "[c]ritical energy infrastructure information," under 18 CFR §§ 388.113 subd. (c)(1)(i). The heat rate ranges and the metered data showing monthly gas deliveries would allow a third party to calculate the actual heat rates for each of the units; consequently, should be kept confidential indefinitely.

1(d). 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.

An exemption to the California Public Records Act is “plant production data, and similar information relating to utility systems development.” Gov. Code, § 6254 subd. (e). The heat rate ranges and the metered data showing monthly gas deliveries are for power generation at each of the power plants and are intricately part of plant production data. An entity obtaining the information would be able to calculate the actual generation of energy by the Applicant within a narrow margin of error. In addition, the calculation of energy could allow for the timing and delivery characteristics of the power which are properties of NERC e-Tag data and should not be available to the public.⁴

Moreover, this application for automatic confidential treatment of Heat Rates and Metered Data is consistent with the designated categories for such treatment related to “[f]uel cost data” and “fuel price data” under 20 CCR §2505 (a)(5)(B)4, and “[e]lectric power plant-specific hourly generation data” under 20 CCR §2505 (a)(5)(B)6.

This treatment is also consistent with designating “generator heat rates,” metered data reflecting monthly gas deliveries as “non-public information” because they relates to “the electric energy and power business.” 18 CFR 35.36(a)(8). Also, the Confidential Records provide “detailed design information about . . . existing critical infrastructure that . . . relates details about the production [and] generation” of energy, so they would be considered “[c]ritical energy infrastructure information,” under 18 CFR §§ 388.113 subd. (c)(1)(i).

In addition, the Confidential Records are “official information.” “[O]fficial information” means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.” Cal. Evidence Code §1040 (a). “A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if... [d]isclosure is forbidden by an act of the Congress of the United States or a statute of this state” or “[d]isclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice. . .” Cal. Evidence Code §1040 (b).

In conjunction with the data designated as “[e]lectric power plant-specific hourly generation data” under 20 CCR §2505 (a)(5)(B)6, “[e]nergy sales data” under 20 CCR §2505 (a)(5)(B)2, and “[c]ritical energy infrastructure information,” under 18 CFR §§ 388.112 subd. (a), 388.113 subd. (c)(1), 18 CFR 366.2 subd. (e), 78 FR ¶ 16133, 16137

⁴ 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.

(decided March 2013), the Confidential Records are “official information” and Evidence Code Section 1040 subsection (b)(1) forbids its disclosure.⁵

Furthermore, 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. 20 CCR §2502(b). The Commission shall designate this information confidential.

Also, the public interest served by not disclosing the record clearly outweighs the public interest in disclosure. Gov. Code §6255. The information could provide competitors a way to drive up the price of electricity if it knew which units would be unavailable for production of energy, thereby allowing it to calculate how much energy would need to be replaced and drive up the prices.

In addition, knowledge of the information in the Confidential Record could allow a competitor to claim it could produce the energy at a lower cost than the Applicant, thereby engaging in a campaign to undermine the Applicant and its ability to produce energy. Consequently, the Applicant could lose its competitive advantage in the market place. Less supply of electricity in the market place would likely result in an increase in electricity prices, all to the detriment of the public.

1(d). 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 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.

Trade secrets are exempt from public disclosure under Government Code section 6254 subdivision (k), “which incorporated the terms of Evidence Code section 1060.”⁶ Under controlling law expressed in *Uribe v. Howie*, a “trade secret may consist of any formula, pattern, device or compilation of information which is used in one’s business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.”⁷ A similar broad definition is incorporated into the Public Records Act by Government Code Section 6254.7 subsection (d), which protects against the disclosure of “trade secrets”:

⁵ See below in response to 1(d) for discussion on balancing test that favors non-disclosure.

⁶ *Uribe v. Howie* (1971) 19 Cal. App. 3d 194, 206.

⁷ *Id.*

“Trade secrets,’ as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, 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.”⁸

To determine whether certain information is a trade secret, the information must be evaluated to assess if it (1) is valuable because it is unknown to others, and (2) the owner has attempted to keep it secret.⁹ The Confidential Records represent a valuable compilation of confidential information related to energy production data. Under CEC regulations, when requesting a trade secret to be deemed confidential, an application must provide: 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.¹⁰

The energy production data, which includes the heat rate ranges and metered data showing monthly gas deliveries meet these qualifications.

1. "The specific nature of the advantage." The Confidential Record is not public information. It provides key components on how to calculate energy production data from each unit at the Applicant's in-basin power plants.

2. "How the advantage would be lost." The Applicant has spent substantial time and resources on the design, construction, environmental assessments, and modeling the range of energy production data during each generating unit's life expectancy. The value of the information would be significantly impaired if made available to the public, which includes the Applicant's competitors, without a commensurate investment of time and resources. The Applicant could lose an advantage to keep electric rates affordable and competitive for its ratepayers if others could discern how and when the Applicant needed energy to meet the demands of its ratepayers.

3. "The value of the information to the Applicant." The energy production data represents commercial value and provides the Applicant with a business advantage over other utilities who do not know or use it. The Confidential Record is valuable information as related to energy production data because it represents significant (a) time and resources, and (b) information instrumental in identifying its costs to produce energy and, as a consequence, to facilitate its energy sales. Further, the Applicant has

⁸ California Government Code §6254.7 sub. (d).

⁹ *Whyte v. Schlage Lock Co.* (2002) 101 Cal. App. 4th 1443, 1454, citing *ABBA Rubber Co. v. Seaquist* (1991) 235 Cal. App. 3d 1, 18.

¹⁰ 20 CCR § 2505(a)(1)(D).

taken efforts to maintain the confidentiality of the Confidential Record to prevent others from either driving up electricity prices based on the Applicant's sales or placing the Applicant at an economic disadvantage by competitors claiming they could produce the energy at a lower cost.

4. "The ease or difficulty with which the information could be legitimately acquired or duplicated by others." The Confidential Record is not available to the public or readily available in the market place. In addition, under federal law the information is part of "market information," which is "non-public information related to the electric energy and power business." 18 CFR 35.36 (a)(8).

Furthermore, section 6255 of the California Government Code as does Evidence Code Section 1040 subsection (b)(2) and Evidence Code Section 1060, apply a balancing test to assess whether data should be nonpublic information. The public interest served by not disclosing the Confidential Record outweighs the public interest in disclosure in two primary ways.

First, the information could provide competitors a way to drive up the price of electricity if it knew which units would be unavailable for production of energy, due to maintenance, for example, and it would then be able to calculate how much energy would need to be replaced and drive up the cost of that replacement energy.

Second, knowledge of the Confidential Record could allow a competitor to "identify the least cost improvements to their facilities to reduce operating costs and heat rates to levels that would permit them to undercut" the price of the Applicant's energy for wholesale sales, thus undermine the Applicant and its competitive advantage to produce energy. Consequently, the Applicant could lose an advantage in the market place.¹¹

Moreover, FERC views energy sales data as "covered by exemption 4 of the Freedom of Information Act (FOIA), which protects 'trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.'"¹² In bolstering its position as to whether commercial or financial information is confidential, in one particular matter FERC referenced NYISO's tariff, which identifies "generator specific data, such as heat rates" as a trade secret.¹³ The U.S. Department of Energy also considers actual heat rates as information to be protected and not disclosed. Form EIA

¹¹ See e.g., Decision by State of New York Public Service Commission, Matter 13-01288, Case 11-M-0294, page 19, providing support for position that heat rates are a trade secret.

¹² 141 F.E.R.C. ¶61,235 (F.E.R.C. 2012) n.142 stating "[t]he Commission noted its view that this data would be covered by exemption 4 of the Freedom of Information Act (FOIA), which protects 'trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential' citing E-Tag NOPR, FERC Stats. & Regs. ¶32,675 at P 16 (citing 5 U.S.C. 552(b)(4) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524 (2007)); 141 F.E.R.C. ¶61,235, rehearing denied 153 F.E.R.C. ¶61177; also, see discussion of trade secrets above.

¹³ New York Indep. Sys. Operator, 129 F.E.R.C. P61,103, 61 (F.E.R.C. 2009).

860, Instructions for Annual Electric Generator Report, Line 16, p.12. (OMB No. 1905-0129). The metered data would allow for the calculation of the generators' heat rates within a narrow margin of error.

Therefore, the Confidential Records are exempt from disclosure under the Public Records Act, and other law, as provided above. Disclosure of this data to outside entities would place the Applicant at a disadvantage by allowing outside entities the ability to determine heat rates for generating facilities and manipulate fuel and/or energy pricing to maximize profit and hurt the Applicant.

1(e). 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 for each facility and each generating unit may not be disclosed, because it does not lend itself to be aggregated. Each generating unit is unique. Furthermore, if it is aggregated with other information it would still provide insight into the energy production data of the Applicant, which would still allow unscrupulous entities to take advantage in the market place, resulting in an ability to manipulate fuel and/or energy pricing to maximize profit and hurt the Applicant.

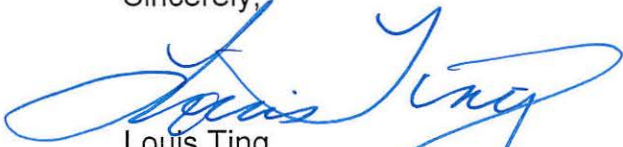
The annual volumes of gas deliveries for all of LADWP's in-basin units may be aggregated and disclosed for the years provided (2011 through 2013).

1(f). 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 Confidential Record is available only on a "need-to-know" basis to select employees involved with energy production for the Applicant. It is not available to all employees.

I certify under penalty of perjury under the laws of the State of California that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge. Further, the factors previously justifying the confidential status for the heat rate ranges, and information for the metered data, as explained herein, continue to justify the confidential designation of the Confidential Records today. I am authorized to make the application and certification on behalf of the Los Angeles Department of Water and Power.

Sincerely,



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