

## DOCKETED

<b>Docket Number:</b>	17-IEPR-03
<b>Project Title:</b>	Electricity and Natural Gas Demand Forecast
<b>TN #:</b>	217145
<b>Document Title:</b>	LADWP Final Confidentiality Request
<b>Description:</b>	Confidential Forms 1.6a, 1.6c, & 1.6d
<b>Filer:</b>	Ramon D. Gamez
<b>Organization:</b>	Los Angeles Department of Water and Power
<b>Submitter Role:</b>	Applicant
<b>Submission Date:</b>	4/17/2017 4:48:20 PM
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Los Angeles  Department of Water & Power

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April 17, 2017

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 and Natural Gas Demand Forecast (Docket 17-IEPR-03) Submittal to the California Energy Commission (CEC) for the 2017 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 Forms 1.6a, 1.6c, and 1.6d as confidential for the reasons identified below.

***Applicant Name, Address, and Contact Information***

Mukhlesur Bhuiyan  
Assistant Director of Power Planning and Development  
111 North Hope Street, Room 921  
Los Angeles, CA 90012  
Office: (213) 367-3532  
Email: [Mukhlesur.Bhuiyan@ladwp.com](mailto:Mukhlesur.Bhuiyan@ladwp.com)

***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.***

LADWP is requesting confidential designation for certain data in the Electric and Natural Gas Demand Forecast Forms 1.6a, 1.6c, and 1.6d. Form 1.6a is related to hourly loads for 2015, 2016, and forecast year 2017. Form 1.6c is related to hourly residential load shape for 2015. Form 1.6d is related to hourly non-residential load shape for 2015. Data provided in Forms 1.6c and 1.6d are subsets of data provided in Form 1.6a.

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

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All information on the Excel Spreadsheet electronic file entitled CONFIDENTIAL – LADWP FORMS 1.6a, 1.6c, & 1.6d under the worksheet tab entitled “Form 1.6a”, “Form 1.6c Load Profiles”, and “Form 1.6d Load Profiles” (Confidential Records) are requested to receive confidential designation. All confidential data is provided in Form 1.6a, Form 1.6c, and Form 1.6d, and is highlighted in yellow on the electronic files.

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

LADWP requests that the Confidential Records be maintained as confidential for five years from the date that the data was collected. 2015 data should be maintained confidential until February 1, 2021. 2016 data should be maintained confidential until February 1, 2022. 2017 data should be maintained confidential until February 1, 2023.

***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.***

Trade secrets are exempt from public disclosure under Government Code section 6254 subdivision (k), “which incorporated the terms of Evidence Code section 1060”<sup>1</sup>. In addition, the CEC automatically protects as confidential some “[e]nergy sales data” under 20 CCR §2505 (a)(5)(B)2 and “Load forecasts” under 20 CCR §2505(a)(5)(B)3.a. and all “[e]lectric power plant-specific hourly generation data” under 20 CCR §2505 (a)(5)(B)6. If these types of data are protected as confidential, it follows that the hourly demand for electricity from LADWP should be similarly protected upon application.

Also, 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 ... disclosure 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).

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<sup>1</sup> *Uribe v. Howie* (1971) 19 Cal. App. 3d 194, 206.

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 increase costs to LADWP's ratepayers by using knowledge of the characteristics of LADWP's hourly load curve to manipulate electricity prices at the times when LADWP is most likely to experience high load and go to the market to purchase energy.

**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 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."<sup>2</sup> 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."<sup>3</sup> 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":

"'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."<sup>4</sup>

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.<sup>5</sup> The Confidential Records represent a valuable compilation of confidential information related to energy demand data. Under CEC regulations, when requesting a trade secret to be

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> California Government Code §6254.7 sub. (d).

<sup>5</sup> *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.

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.<sup>6</sup>

The hourly load data contained in Forms 1.6a, 1.6c, and 1.6d meet these qualifications.

1. “The specific nature of the advantage.” The Confidential Records are not public information. The historical and forecasted hourly data provide key information on how to calculate LADWP’s load curve characteristics.
2. “How the advantage would be lost.” LADWP has invested substantial time and resources in developing the load forecasts and load research data. Further, the historical hourly data could be utilized by Applicant’s competitors to model future LADWP load. Additionally, load research data is a component of LADWP’s confidential rate design methodology. 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 hourly load data represents commercial value and provides the Applicant with a business advantage over other utilities who do not know or use it. The Confidential Records are valuable information as related to energy demand within LADWP territory. Further, the Applicant has taken efforts to maintain the confidentiality of the Confidential Records to prevent others from driving up electricity prices based on the Applicant’s load curve. This data is nowhere publicly available.
4. “The ease or difficulty with which the information could be legitimately acquired or duplicated by others.” The Confidential Records are not available to the public or readily available in the marketplace. 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 do 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 for the reason below.

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<sup>6</sup> 20 CCR § 2505 (a)(1)(D).

The information could provide Applicant's competitors a way to manipulate the price of electricity if it knew when LADWP's load would reach a level that would require LADWP to purchase additional energy from the market. LADWP's net short position can be derived using this hourly load data.

**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.**

It wouldn't be acceptable to aggregate the data on a county wide basis or regional basis. However, aggregation of the data on a statewide basis would be acceptable.

**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.**

All information is housed in one location within LADWP. Any LADWP employee requesting access needs to submit a formal request for permission to access the data. 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,

Original signed by: Mukhlesur Bhuiyan  
Assistant Director of Power Planning and Power

RDG:rq  
Enclosures

c/enc: Ms. Pjoy T. Chua  
Mr. Ramon D. Gamez