

DOCKETED

Docket Number:	17-IEPR-02
Project Title:	Electricity Resource/ Supply Plans
TN #:	217231
Document Title:	Final LADWP Confidentiality Request - Form S-5 04202017
Description:	N/A
Filer:	Ramon D. Gamez
Organization:	Los Angeles Department of Water and Power
Submitter Role:	Applicant
Submission Date:	4/20/2017 5:47:41 PM
Docketed Date:	4/21/2017

ERIC GARCETTI
Mayor

Commission
MEL LEVINE, *President*
WILLIAM W. FUNDERBURK JR., *Vice President*
JILL BANKS BARAD
MICHAEL F. FLEMING
CHRISTINA E. NOONAN
BARBARA E. MOSCHOS, *Secretary*

DAVID H. WRIGHT
General Manager

April 20, 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 Resource and Supply Plans (Docket 17-IEPR-02)
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 as confidential specific categories of data, identified in this application, contained within the California Energy Commission's Electricity Resource and Supply Plans, Form S-5 for 26 identified supply contracts. The information is substantially similar to information designated as confidential in 2015 for prior Integrated Energy Policy Reports; therefore, the application should be considered a repeated application and receive confidential designation. Please see the attached letter dated June 5, 2015 from Robert Oglesby to Pjoy Chua and the below certification. Consequently, information submitted to the CEC can be deemed confidential without the need for a new application under 20 C.C.R. §§ 2505 (a)(1)(G) and 2505(a)(4).

Applicant Name, Address, and Contact Information

Louis C. Ting
Director of Power Planning and Development
111 North Hope Street, Room 921
Los Angeles, CA 90012
Office: (213) 367 - 0239
Email: Louis.Ting@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.

Information specified in cell C35 ("Supplier/Seller:"), cell H35 ("Plant/Unit Identifier – EIA Plant ID"), and cells M9 through M33 (Supply Resource(s) Delivery Zone/Point") on the Excel Spreadsheet electronic file entitled CONFIDENTIAL – LADWP FORMS S-5 – April 20, 2017.xlsx under the worksheet tab entitled S-5 Table are requested to receive confidential designation. All confidential data is provided in Form S-5, and is highlighted in yellow on the electronic file.

Applicant has identified 26 contracts containing confidential information. The table below indicates the contract names and requested confidentiality items.

Form	Contract Name	Confidentiality Items	Data should be maintained confidential until:
S-5	Wind; Linden	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; Windy Point	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; Pebble Springs	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; Willow Creek	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; Milford 1	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; Milford 2	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; SW Wyoming	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; Manzana	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Moapa Southern Paiute	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Copper Mountain Solar 3	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; RE Cinco	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Springbok 1	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Springbok 2	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Springbok 3	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Beacon Solar Project Site 1	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Beacon Solar Project Site 2	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Beacon Solar Project Site 3	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Beacon Solar Project Site 4	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Beacon Solar Project Site 5	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Geothermal; Don Campbell 1	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Geothermal; Don Campbell 2	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Geothermal; Heber 1	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Geothermal; Hudson Ranch	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Geothermal; Ormesa	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Geothermal; NV Geothermal Portfolio	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Natural Gas; Supplier 1	Supplier / Seller and Plant/Unit Identifier- EIA Plant ID	Indefinitely

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

Applicant requests that information specified in cell C35 ("Supplier/Seller:"), cell H35 ("Plant/Unit Identifier – EIA Plant ID"), and cells M9 through M33 (Supply Resource(s) Delivery Zone/Point") on the Excel Spreadsheet electronic file entitled CONFIDENTIAL – LADWP FORMS S-5 - April 20, 2017.xlsx under the worksheet tab entitled S-5 Table are requested to receive confidential

designation. All confidential data is provided in Form S-5, and is highlighted in yellow on the electronic file.

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

Applicant requests that the Confidential Data be designated as confidential by the CEC indefinitely. The applicant does not make critical energy/electric infrastructure information or related NERC e-Tag data publicly available. The supply resource delivery points are critical energy/electric infrastructure information.

Applicant's confidential data relates to, among other things, the transmission and transportation of energy, which constitutes "critical energy/electric infrastructure information." 18 C.F.R. §§ 388.113(c); 18 C.F.R. § 388.112; 6 U.S.C. §§ 131, 133. See table below for the length of time data should be maintained confidential.

Form	Contract Name	Confidentiality Items	Data should be maintained confidential until:
S-5	Wind; Linden	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; Windy Point	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; Pebble Springs	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; Willow Creek	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; Milford 1	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; Milford 2	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; SW Wyoming	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Wind; Manzana	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Moapa Southern Paiute	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Copper Mountain Solar 3	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; RE Cinco	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Springbok 1	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Springbok 2	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Springbok 3	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Beacon Solar Project Site 1	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Beacon Solar Project Site 2	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Beacon Solar Project Site 3	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Beacon Solar Project Site 4	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Solar; Beacon Solar Project Site 5	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Geothermal; Don Campbell 1	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Geothermal; Don Campbell 2	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Geothermal; Heber 1	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Geothermal; Hudson Ranch	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Geothermal; Ormesa	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Geothermal; NV Geothermal Portfolio	Supply Resource(s) Delivery Zone/Point	Indefinitely
S-5	Natural Gas; Supplier 1	Supplier / Seller and Plant/Unit Identifier- EIA Plant ID	Indefinitely

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.

The information is substantially similar to information designated as confidential in 2015 for prior Integrated Energy Policy Reports; therefore, the application should be considered a repeated application and receive confidential designation. Please see the attached letter dated June 5, 2015 from Robert Oglesby to Pjoy Chua and the below certification. Consequently, information submitted to the CEC can be deemed confidential without the need for a new application under 20 C.C.R. §§ 2505 (a)(1)(G) and 2505(a)(4).

In addition, 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. § 2505(b).

Applicant has identified 26 supply contracts that contain confidential data exempted from disclosure under state and federal law, including Government Code Sections 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/electric infrastructure information.” 18 C.F.R. §§ 388.113(c); 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

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).

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 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

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

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 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 WSPF 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 energy/electric infrastructure information."

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 energy/electric infrastructure information or related NERC e-Tag data publicly available. The supply resource delivery points are critical energy/electric infrastructure information. 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.

Mr. Robert P. Oglesby

Page 7

April 20, 2017

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. 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,



Louis C. Ting
Director of Power Planning and Development

RDG:rq

Enclosures

c/enc:

LADWP Confidentiality Grant by CEC 06-05-2015 TN204915_20150605T111508

Ms. Pjoy T. Chua

Mr. Ramon D. Gamez