

DOCKETED

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CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

May 3, 2017

Greg Bass
Director, Retail Commodity Operations
Calpine Energy Solutions, LLC
401 West A Street, Suite 500
San Diego, CA 92101

**RE: Application for Confidential Designation for 2017 IEPR Electricity
Demand Forecast Forms 7.1 and 8.1a (ESP)
Docket No. 17-IEPR-03**

Dear Mr. Bass:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of Calpine Energy Solutions, LLC (Applicant). The application seeks confidential designation for data in the Electricity Demand Forecast Forms 7.1 and 8.1a (ESP) (Confidential Records).

The application states that confidentiality is sought for information about the actual and forecasted annual energy purchases for the years 2016–2023, annual and forecasted peak loads for 2016–2023, customer counts for 2016–2023, and historical and forecasted energy procurement costs from 2013–2028. Applicant states that it is feasible to aggregate and mask the data with other energy service providers' demand forecasts. The Confidential Records for the years listed have not been previously disclosed to the public.

A properly filed Application for Confidentiality shall be granted under the 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 [Energy] Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.)

California courts have traditionally used the following definition of trade secret:

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. . . .

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(Uribe v. Howe (1971) 19 Cal.App.3d 194, 207, citing the Restatement of Torts, vol. 4, § 757, comment b, p.5.)

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, an application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to an applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application addresses these four elements: 1) the Confidential Records contain commercially sensitive data which could provide insight into Applicant's business strategies; 2) if publicly disclosed, the data could be used to determine Applicant's historical and forecasted power and capacity needs, which could be used by competitors to cause competitive harm to Applicant, or could be used by suppliers to Applicant's disadvantage in negotiating price and terms or procurement transactions, or could be used by customers to extract better terms in contract negotiations with Applicant; 3) the data has commercial value to Applicant which provide a competitive advantage; and 4) the Confidential Records are not available to the public.

The application is clear that confidentiality is being sought for trade secret information related to energy consumption metering. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the specified portions of the Confidential Records from public disclosure.

Applicant requests that the information be kept confidential for a three year period. The trade secret information has market value for approximately three years after its production to the California Energy Commission; therefore, it is appropriate to grant confidentiality for three years.

For the reasons stated above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential for three years.

This grant of confidentiality is only for those years of the Confidential Records specified above. Please file a public version of the forms to the docket. This public document should be redacted only to the point necessary to protect confidentiality.

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Be advised that persons may petition to inspect or copy records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

If you have any questions concerning this matter, please contact Michelle Chester, Staff Counsel, at (916) 651-2935.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. P. Oglesby', with a long horizontal line extending to the right.

Robert P. Oglesby
Executive Director

cc: Docket Unit, California Energy Commission
Cynthia Rogers, California Energy Commission