

<b>DOCKETED</b>	
<b>Docket Number:</b>	18-PSDP-01
<b>Project Title:</b>	Power Source Disclosure Program - 2017 Confidential Documents
<b>TN #:</b>	224224
<b>Document Title:</b>	Response Letter to Direct Energy Business, LLC for Confidential Designation for Power Source Disclosure Annual Report
<b>Description:</b>	N/A
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## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
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July 18, 2018

Buck Endemann, Attorney for  
Direct Energy Business, LLC  
K&L Gates, LLC  
Four Embarcadero Center, Suite 1200  
San Francisco, CA 94111

RE: **Application for Confidential Designation for Power Source Disclosure  
Annual Report  
Docket No. 18-PSDP-01**

Dear Mr. Endemann:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of Direct Energy Business, LLC (Applicant). The application seeks confidential designation for specified data contained in Applicant's Annual Report under the Power Source Disclosure program (PSDP). The application states that confidentiality is sought for market sensitive information that constitutes a trade secret contained in PSDP Schedules 1 and 2.

The application states that confidential information contained in the Annual Report may be disclosed if it is aggregated with the same type of data reported by other Energy Service Providers. The information has 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. . . .

(*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 elements. Applicant would be harmed by public disclosure of the confidential information because the information reflects Applicant's historical retail load for the year 2017. If disclosed, this information could be used to directly or indirectly determine Applicant's market position to the detriment of Applicant and its customers. Competitors could be able to ascertain Applicant's Renewables Portfolio Standard obligations and make Applicant's power procurement and compliance obligations more expensive, which could increase costs, for Applicant and its customers. The information cannot be legitimately acquired or duplicated by others.

The application is clear that confidentiality is being sought for trade secret information reported as megawatt hours related to energy retail sales information. Applicant has made a reasonable claim that the law allows the California Energy Commission to keep all reported megawatt hours contained in the Annual Report from public disclosure. However, information reported under the PSDP as percentages of retail sales, as opposed to megawatt hours, does not qualify as a trade secret warranting protection from public disclosure. Reported percentages do not pose a risk of disclosing historical retail sales or purchases information that would divest Applicant of a competitive advantage.

Applicant requests that the information be kept confidential until December 31, 2019. I have determined that December 31, 2018, or one year from the end of the reporting period, is the appropriate time to keep confidential all reported megawatt hours contained in the Annual Report because it represents the amount of time the information is expected to retain validity and market value, and because any lesser period of time would undermine existing confidentiality protection of the same or substantially similar data held by the California Public Utilities Commission. However, the information may be released earlier if applicant-specific information is aggregated with information from all other Energy Service Providers on a statewide level.

For the reasons stated above, the request for confidential designation for the reported megawatt hours contained in the Annual Report is granted. The information will remain confidential until December 31, 2018.

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.



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If Applicant seeks confidential designation for future PSDP annual reports that are substantially similar to information deemed confidential by way of this letter, Applicant may follow the simplified process set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have any questions concerning this matter, please contact Jennifer Martin-Gallardo, Senior Attorney, at (916) 651-3748.

Sincerely,



Drew Bohan  
Executive Director

cc: Docket Unit  
Camille Remy-Obad, Renewable Energy Office  
Jennifer Martin-Gallardo, Senior Attorney