

**DOCKETED**

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<b>Project Title:</b>	Electricity Resource Plans
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<b>Document Title:</b>	California Energy Commission Letter to Mr. Greg Bass - Calpine Energy Solutions, LLC
<b>Description:</b>	Response to Application for Confidential Designation
<b>Filer:</b>	Harinder Kaur
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
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<b>Docketed Date:</b>	5/20/2019



May 20, 2019

Mr. Greg Bass, Regulatory Director  
Calpine Energy Solutions, LLC  
401 West A Street, Suite 500  
San Diego, California 92101

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 Resource Planning Form S-1, Form S-2, and Form S-5.

The application states that confidentiality is sought for information related to contracts that is considered proprietary and confidential. Applicant further requests that the designation of confidentiality be for a three-year period. Applicant states that it is feasible to aggregate and mask the data with other energy service providers' Electricity Resource Plans.

An 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.

Mr. Greg Bass  
May 20, 2019  
Page Two

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 provides a competitive advantage; and 4) the Confidential Records are not available to the public.

The Applicant has made a reasonable claim that the law allows the 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 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 through April 22, 2022.

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 Robert Kennedy, Energy Commission staff at (916) 654-5180.

Sincerely,



Drew Bohan  
Executive Director

cc: Siva Gunda, Deputy Director, Energy Assessments Division