

DOCKETED

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Description:	Response to Application for Confidential Designation
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May 28, 2019

Ms. Marcie A. Milner, Vice President
Regulatory Affairs
Shell Energy North America
4445 Eastgate Mall, Suite 100
San Diego, California 92121

Dear Ms. Milner:

The California Energy Commission is in receipt of an application for confidentiality submitted on behalf of Shell Energy North America (US), L.P. (applicant). The application seeks confidential designation for highlighted data in the Electricity Resource Planning 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 information. The applicant further requests that the designation of confidentiality be for a three-year period.

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

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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 the applicant's business strategies; 2) if publicly disclosed, the data could be used to determine historical and forecasted power and capacity needs, which could be used by competitors to cause competitive harm to the applicant, or could be used by suppliers to the 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 the applicant; 3) the data has commercial value to the 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.

The 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 through April 19, 2022.

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

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