

DOCKETED	
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Project Title:	Power Source Disclosure Program - 2019
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Description:	N/A
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Organization:	Ellison Schneider Harris & Donlan LLP
Submitter Role:	Applicant Representative
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July 20, 2020

Mr. Drew Bohan
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5504

RE: Docket 20-PSDP-01 - Application for Confidential Designation – Bear Valley Electric Service, Inc. Power Source Disclosure Annual Report.

Dear Mr. Bohan:

Bear Valley Electric Service, Inc. (“BVES”), by this Application for Confidential Designation, respectfully requests protection of certain information provided to the Commission in the attached Annual Power Source Disclosure Report consistent with Title 20 California Code of Regulations (“CCR”) Sections 2501 *et seq.*

Please feel free to contact me at (916) 447-2166 should you or Staff have any questions or require additional information regarding this Application. Thank you for your consideration of our request.

Sincerely,

A handwritten signature in blue ink that reads "Jedediah J. Gibson".

Jedediah J. Gibson
Ellison Schneider Harris & Donlan LLP
Attorneys for Bear Valley Electric Service, Inc.

Confidential Materials submitted via confidential e-filing

APPLICATION FOR CONFIDENTIAL DESIGNATION
Bear Valley Electric Service, Inc.
Power Source Disclosure Annual Report
July 20, 2020

1. *Specifically indicate those parts of the record which should be kept confidential.*

BVES requests that the following information remain confidential:

Form	Information to be held confidential
Schedule 1	<ul style="list-style-type: none"> • Retail Sales (MWh), Net Specified Procurement (MWh), Unspecified Power (MWh), Net Natural Gas in cells L7:L9 and L11; • Specified Non-Renewable Procurement data in cells A52:K52.
Schedule 3	<ul style="list-style-type: none"> • Adjusted Net Procured (MWh) in cells B21, B24:B25; • Total Retail Sales (MWh) in cell C27; • Percentage of Retail Sales Covered by Retired Unbundled RECs in cell C29.

BVES has highlighted in yellow, where the spreadsheet allows, the above identified cells containing information it seeks to keep confidential.

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

BVES requests that the identified information be kept confidential until December 31, 2021. This specific term is requested to align the protection of data provided to the CEC in this form with treatment provided in other contexts, most specifically by the California Public Utilities Commission (“CPUC”) under its confidentiality program.

This information should be kept confidential because: (1) the information is not otherwise publicly available or readily discoverable in the form or detail provided at this time; (2) the information is market sensitive and constitutes trade secrets in terms of disclosing BVES’s very recent wholesale and retail activities, and (3) the release of this information will result in loss of competitive advantage in the wholesale and retail marketplaces relative to BVES’s ability to negotiate future contracts for the purchase or resale of energy and/or capacity at wholesale.

BVES asks that the identified data be held in confidence until December 31, 2021. This requested period of time is appropriate as the data is expected to retain validity and market value over that period, and because any lesser period would

undermine existing protection of the same or substantially similar data by other regulators or market entities, including the CPUC, the California Air Resources Board and the California Independent System Operator (“CAISO”). BVES has also fashioned this request to reflect the scope of protection provided to utility (“IOU”) data in CPUC Rulemaking 05-06-040, and, in particular, CPUC Decision (“D.”) 06-06-066 and related modifications made in D.08-04-023, Appendix C (“IOU Matrix”), in an effort to have consistency across California energy agencies.¹ The public release of the specified information, particularly to competitors and existing and potential sellers, would result in a loss of competitive advantage for BVES in the wholesale and retail markets, and may result in disclosure of information about internal operating practices.

3. *Cite and discuss (i) the provisions of the Public Records Act or other law which allow the commission to keep the record confidential and (ii) the public interest in nondisclosure of the record.*

Under Public Resources Code Section 25322, the Commission is required to grant a request for confidential designation of information collected pursuant to Pub. Res. Code Section 25301(a) if:

- (a) the information is exempt from disclosure under the California Public Records Act (Govt. Code §§ 6250 et seq.);
- (b) the information meets the confidentiality requirements set forth in the Commission’s regulations; or
- (c) on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure.

The Public Records Act exempts “trade secrets” from public disclosure, including “any formula, plan, . . . production data, or compilation of information . . . , which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service . . . and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.” (Govt. Code § 6254.7(d).)

The Commission’s regulations provide for information to be designated as confidential if it “contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage.” (20 CCR § 2505(a)(1)(D).)

¹ While BVES understands and acknowledges that the confidentiality rules granted by the California Public Utilities Commission and the California Energy Commission are different in some respects, BVES seeks to maintain consistency in the data it makes publicly available. Consistency also prevents BVES from inadvertent disclosures of confidential information.

The information identified above contains trade secrets or otherwise commercially sensitive data, the disclosure of which could cause loss of a competitive advantage. As a net purchaser in the competitive wholesale markets, BVES holds information on its retail and wholesale market positions in confidence. The 2019 PSD form calls on LSEs to provide confidential information on the applicant's competitive positions relative to other LSEs. The reporting form contains numerous inter-related data fields that enable a user to back calculate information. The materials identified above should be protected for the requested period because the information is commercially sensitive and not publicly available and/or constitutes trade secrets the public disclosure of which could harm BVES. Moreover, this information can be used to directly or indirectly determine BVES's market position to the detriment of BVES and its customers. Accordingly, BVES requests that all of the information described in section 1 above, and any related, supporting data that may be provided pursuant to a subsequent Staff request, be designated as confidential.

BVES believes that the public interest in having an open, public debate on key energy issues facing the state can be satisfied by disclosure of information submitted by BVES and other LSEs collectively aggregated on a state-wide basis. Any greater granularity in the data released, including disclosure of any BVES-specific data that is not aggregated with other LSEs, could expose BVES's market position to its competitors, including other LSEs.

BVES requests that the identified information also be deemed confidential for the following additional reasons: The information is commercially sensitive and constitutes a trade secret and is therefore exempt from disclosure. (Evidence Code § 1060, Civil Code § 3426.1(d).) Moreover, the public interest in nondisclosure clearly outweighs the public interest in disclosure insofar as release of this economic information may directly harm BVES's existing and future commercial opportunities, and disclosure may also harm BVES's customers by foreclosing favorable commercial opportunities. (Gov't Code § 6255.)

4. *State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

BVES has considered whether it would be possible to aggregate or mask the identified information. BVES can support the aggregation of BVES-specific information *with similar information from all other LSEs and solely disclosed on a statewide aggregated basis*. BVES believes that disclosure of BVES-specific data of the types collected here, even if aggregated on a statewide basis but specific to BVES, could lead to the disclosure of BVES's wholesale and retail market positions and thereby result in harm to BVES. Given the competitive nature of the provision of electric service, BVES

asserts that any LSE-specific listing of data by anything less than statewide aggregation would result in disclosure of confidential data.

5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

BVES has not disclosed any of the subject information to anyone other than its employees, attorneys and consultants working with the Company, or government agency employees or employees of the CAISO subject to confidentiality protection. BVES endeavors to keep information of commercial value, like the subject information identified herein, confidential. In fact, all BVES employees, officers and directors should maintain the confidentiality of information entrusted to them by the Company or its customers, suppliers, business partners or others in the course of conducting business with the Company, except when disclosure is authorized or legally mandated.

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 Bear Valley Electric Service, Inc.

Dated: July 20, 2020

Sincerely,



Jedediah J. Gibson
Ellison Schneider Harris & Donlan LLP
Attorneys for Bear Valley Electric Service, Inc.