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August 20, 2021

Via Email

Marcie Milner
Vice President
Shell Energy North America (US), L.P.
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**Application for Confidential Designation for Data in Power Source
Disclosure Program Annual Report, Docket 21-PSDP-01**

Dear Marcie Milner,

The California Energy Commission (CEC) received the confidentiality application(s) submitted by Shell Energy North America (US), L. P. (applicant) on June 1, 2021, for specified data contained in the 2020 Annual Report under the Power Source Disclosure (PSD) program. Specifically, confidentiality is sought for:

PSD Schedule 1 –

Retail Sales, Net Specified Procurement and Unspecified Power [all in Megawatt hours (MWh)] , Procurement to be adjusted, Net Specified Natural Gas, Net Specified Coal & Other Fossil Fuels Power, GHG Emissions (excluding grandfathered emissions), and GHG Emissions Intensity in metric tons of carbon dioxide equivalent per MWh (MT CO₂e/MWh), in cells N7:N15; MWh Resold in cells I18:I122; Gross MWh Procured in cells H18:H122; Net MWh Procured in cells J18:J122; Adjusted Net MWh Procured in cells K18:K122; GHG Emissions (in MT CO₂e) in cells M18:M122; Eligible for Grandfathered Emissions data in cells N107:N113; GHG Emissions Factor (in MT CO₂e/MWh) in cells L18:L122

PSD Schedule 2 –

Total Unbundled Renewable Energy Credits (RECs) in MWh in cell E9;
Retired Unbundled RECs: Total Retired MWh in cells E12:E34

PSD Schedule 3 –

Adjusted Net Procured (MWh) in cells B13:B25; Percent of Total Retail Sales in cells C13:C25; GHG Emissions Intensity (converted to pounds CO₂e/MWh) in cell C29; Percentage of Retail Sales Covered by Retired Unbundled RECs in cell C 31; Total Retail Sales (MWh) in cell C27

Confidential designation of this data is requested pursuant to Title 20, California Code of Regulations, section 2505, on the grounds that the information is not otherwise publicly available or readily discoverable in the form or detail provided at this time, that the information is market sensitive and constitutes trade secrets in terms of disclosing applicant's very recent wholesale and retail activities, and that the release of this information will result in loss of competitive advantage in the wholesale and retail marketplaces relative to applicant's ability to negotiate future contracts for the purchase or resale of energy and/or capacity at wholesale, or negotiation of contracts with retail customers. The application also states that confidentiality is appropriate under Government Code section 6255(a) because the public interest in nondisclosure clearly outweighs the public interest in disclosure.

A properly filed Application for Confidentiality shall be granted under Title 20, California Code of Regulations, section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [CEC] to keep the record confidential." The California Public Records Act allows for the non-disclosure of corporate proprietary information including trade secrets. (Gov. Code, sections 6254(k), 6276.44; see also Evid. Code, section 1060; Civ. Code, section 3426.1.) Government Code section 6255 also permits the CEC to withhold a public record where "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

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, 207-208, from the Restatement of Torts, vol. 4, section 757, comment b, p. 5.)

Title 20, California Code of Regulations, 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.

Here, the application states that the data constitutes trade secrets or otherwise commercially sensitive data, which has not been disclosed to anyone except the applicant's employees, government agencies, or CAISO subject to confidentiality projections. The application states that the applicant operates in the competitive and dynamic retail energy markets and is a net purchaser in the competitive wholesale markets, so the confidentiality of data regarding its retail and wholesale market positions is a competitive advantage. The application also states that disclosure of this information can be used to directly or indirectly determine the applicant's market position and would result in a loss of competitive advantage in the wholesale and retail marketplaces relative to its ability to negotiate future contracts for the purchase or resale of energy, or with respect to negotiation of contracts with retail customers. The application also states that confidential information contained in the annual reports may be disclosed if it is aggregated on a statewide basis with the same type of data reported by other energy service providers or load serving entities, and steps are taken to ensure that the applicant's specific data cannot be ascertained.

The application requests the total retail sales be kept confidential and not publicly disclosed until June 1, 2022. The CEC has historically granted confidentiality for this type of data through December 31 of the current year, at which time the data will be one year old. A term ending one year from the end of the reporting period also represents the amount of time this type of data is considered confidential by the California Public Utilities Commission (CPUC). (Decisions R05-06-040 [Appendix B, Electric Service Provider (ESP) Matrix, section V], and D06-06-066 [Appendix 2, ESP Matrix, *Market Purchases of Energy and Capacity: public after one year*].)

The application also requests that information regarding GHG emissions (Schedule 1 – cells N14:N15, M18:M122, and L18:L122; Schedule 3 – cell C29) be kept confidential. This request is denied, as the reporting of these emissions is mandatory pursuant to the California Global Warming Solutions Act of 2006, as set forth in the California Health & Safety Code, section 38500 et seq. (Health & Safety Code sections 38510, 38530; Cal. Code Regs. tit. 17, sections 95101, 95102, and 95106), and also pursuant to California Government Code section 6254.7.

Based on this information, the confidentiality applications are hereby approved with respect to all other data requested be kept confidential other than GHG emissions data. The data will remain confidential until the applicant publicly releases its power content label, but no later than December 31, 2021.

The information may be released before December 31, 2021 or publication of the power content label if applicant-specific information is aggregated with information from all other statewide energy service providers. Load serving entities provide quarterly annual retail sales under Title 20, California Code of Regulations, section 1306. As set forth in Title 20, California Code of Regulations, section 2507(e)(1)(A)(1), the quarterly data can be publicly disclosed for an individual load serving entity if aggregated at the statewide level by year. Therefore, data submitted consistent with this aggregation will not be confidential.

Be advised that persons may petition to inspect or copy records that the CEC has designated as confidential, the executive director may disclose or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the Title 20, California Code of Regulations, sections 2506-2508.

You may request confidentiality for similar data in a future annual report without submitting an application by following the procedures set forth in Title 20, California Code of Regulations, section 2505(a)(4).

If you have any questions, please contact Raj K. Dixit, attorney, at raj.dixit@energy.ca.gov or (916) 776-3055.

Sincerely,



Drew Bohan
Executive Director