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September 1, 2021

Via Email

William Boyer
Commercial Energy of Montana
7677 Oakport Street, Suite 525
Oakland, California 94621
Bill.boyer@commercialenergy.net

**Application for Confidential Designation for Data in Power Source
Disclosure Program Annual Report, Docket 21-PSDP-01**

Dear William Boyer:

The California Energy Commission (CEC) received the confidentiality application(s) submitted by Commercial Energy of Montana dba, Commercial Energy of California (applicant or CEM) on May 28, 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, unspecified power.

PSD Schedule 3 – Total retail sales, percentage of retail sales covered by retired unbundled RECs.

Confidential designation of this data is requested pursuant to Title 20, California Code of Regulations, section 2505, on the grounds that the information constitutes trade secrets and proprietary information not available to the general public or is otherwise commercially sensitive data, the disclosure of which would cause loss of a competitive advantage. Additionally, the applicant states the data relates to a small number of specific customers and so is protected by the California Constitution, Article 1, section 1.

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 should be kept confidential because CEM does not publicly disclose its total retail sales and related information that could be used to calculate total retail sales, and because its public release could inform sellers of the applicant’s power capacity requirements and use the information to “manipulate the market,” resulting in the applicant and its retail customers paying more for power. The application also states that confidential information contained in the annual reports may be disclosed if it is aggregated 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 for a period no less than one year. The CEC has historically granted confidentiality for this type of data either through December 31 at which time the data will be one year old, or until an entity’s power content label is publicly released (see Pub. Util. Code section 398.4), whichever is earlier.

Based on this information, the confidentiality application is hereby approved until the applicant publicly releases its power content label, which is to be released no later than through 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 Dixit, attorney, at raj.dixit@energy.ca.gov or (916) 776-3055.

Sincerely,



Drew Bohan
Executive Director