

DOCKETED	
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November 15, 2021

Via Email

Rebecca Meiers-De Pastino
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770
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**Application for Confidential Designation for Data in Integrated Energy Policy
Report, Docket 21-IEPR-02**

Dear Rebecca Meiers-De Pastino:

The California Energy Commission (CEC) received the application for confidential designation (application) submitted by Southern California Edison (applicant) on October 1, 2021, for specified data submitted in the 2021 Integrated Energy Policy Report (IEPR) proceeding. The application contains a repeated request covering data previously designated as confidential and a request related to new data. The request indicates that all confidential data is highlighted on the submitted spreadsheets. Specifically, the confidential designation is sought for:

Form S-1(Repeated Request)

Capacity / Energy Requirement Form

- Line 1: Forecast Total Peak Hour 1-in-2 Demand (2021 through 2030)
- Line 5: Adjusted Demand: End-Use Customers (2021 through 2030)
- Line 7: Coincident Peak-Hour Demand (2021 through 2030)
- Line 8: Required Planning Reserve Margin (2021 through 2030)
- Line 11: Firm LSE Procurement Requirement (2019 through 2030)
- Line 12: Forecast Total Energy Demand / Consumption (2021-2030)
- Line 16: Adjusted Demand: End-Use Customers (2021 through 2030)
- Line 17: Firm Sales Obligations (2021 through 2030)
- Line 18: Firm LSE Procurement Requirement (2021 through 2030)

Form S-2 (Repeated and New Request)

Capacity / Energy Supply Resources Form

Highlighted lines containing resource supply data from various sources. In addition, the applicant also requests the capacity/energy balance summary contained in rows 680-682, lines 9-11 be designated as confidential.

Form S-5

Bilateral Contracts Table

While the application has identified highlighted sections of Form S-5 that are to be considered confidential, no fields on the spreadsheet were highlighted or otherwise indicated to be confidential. From other applications, the contract start and end dates are typically requested to be confidential consistent with the CPUC confidentiality matrix.

Confidential designation of this data is requested pursuant to California Code of Regulations, Title 20, 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 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 confidential designation shall be granted under 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 [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.)

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.

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 California ISO 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 notes information about the timing and quantity of energy the applicant must sell or purchase is extremely valuable and 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 for confidential designation for the specified information contained in Forms S-1, S-2, and S-5 is granted for the requested three years forward and one year back basis consistent with the CPUC's confidentiality matrix, or until such time as it may be publicly released, whichever is earlier. The information in Forms S-1 and S-2 may be released before December 31, 2024, if applicant-specific information is aggregated with information from all other statewide energy service providers. Load serving entities provide quarterly annual retail sales under California Code of Regulations, Title 20, section, 1306. As set forth in California Code of Regulations, Title 20, 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 under California Code of Regulations, Title 20, section 2506, one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy records is issued by the CEC's chief counsel. Under California Code of Regulations, Title 20, section 2507, 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 California Code of Regulations, Title 20, sections 2506-2508.

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You may seek a confidential designation for information that is substantially similar to information for which an application for confidential designation was granted by the executive director by following the procedures set forth in California Code of Regulations, Title 20, section 2505(a)(4).

If you have any questions, please contact Jared Babula, attorney IV, at jared.babula@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Bohan", with a long horizontal stroke extending to the right.

Drew Bohan
Executive Director