

DOCKETED

| | |
|-------------------------|--|
| Docket Number: | 21-IEPR-03 |
| Project Title: | Electricity and Natural Gas Demand Forecast |
| TN #: | 240697 |
| Document Title: | CEC IEPR Response Letter Shell Energy North America (SENA) June 29, 2021 |
| Description: | N/A |
| Filer: | Pam Fredieu |
| Organization: | California Energy Commission |
| Submitter Role: | Commission Staff |
| Submission Date: | 11/23/2021 10:19:31 AM |
| Docketed Date: | 11/23/2021 |



November 23, 2021

Via Email

Marcie A. Milner
Vice President, Regulatory Affairs
Shell Energy North America (US), L.P.
4445 Eastgate Mall, Suite 100
San Diego, California 92121
marcie.milner@shell.com

Application for Confidential Designation for Data in Integrated Energy Policy Report, Docket 21-IEPR-03

Dear Marcie A. Milner:

The California Energy Commission (CEC) received Shell Energy North America, L.P.'s, (applicant) application for confidential designation (application) on June 29, 2021, for specified data submitted in the *2021 Integrated Energy Policy Report* (IEPR) proceeding. Specifically, confidential designation is sought for:

Form 7.1 –

Applicant's actual historical retail sales, peak demand, and customer count for 2020, and forecast retail sales, peak demand, and customer count for each year 2021-2024 (Columns C-P, Lines 11-15).

Form 8.1a (ESP) –

Applicant's actual historical and forward procurement power supply costs (bilateral contracts and residual market transactions) for each year 2019-2032 (Columns B-N, Lines 9-12).

Confidential designation of this data is requested pursuant to Title 20, California Code of Regulations, section 2505. The application states that public disclosure of the information could competitively harm applicant because the information reflects applicant's immediately past year's actual demand, applicant's forecast demand for the next three years, and applicant's historical and forecast power supply costs to serve retail load in the service territories of the California investor-owned electric utilities.

The application further states that public disclosure of this confidential information would reveal applicant's actual and projected demand (including customer count), its power

purchase costs, as well as a breakdown between bilateral contract costs and residual market transaction costs, thereby placing applicant at a competitive disadvantage in the wholesale and retail electricity markets.

Finally, the application states if publicly disclosed the information could be used by applicant's competitors to adjust their business strategies to gain a competitive advantage, and thus damage applicant. This information also could be used by applicant's suppliers and/or customers and cause a disadvantage to applicant when negotiating the price and terms of procurement transactions or retail contract terms.

A properly filed application for confidential designation 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. Howie* (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 publicly. The application 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.

The application notes 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 load serving entities.

Based on this information, the application for confidential designation is hereby approved and the data will remain confidential through December 31, 2024, or until it is publicly released, whichever is earlier.

The information may be released before December 31, 2024, if applicant-specific information is aggregated with information from other load serving entities. 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 under Title 20, California Code of Regulations, 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 Title 20, California Code of Regulations, 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 Title 20, California Code of Regulations, sections 2506-2508.

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 Title 20, California Code of Regulations, section 2505(a)(4).

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

Sincerely,



Drew Bohan
Executive Director