

<b>DOCKETED</b>	
<b>Docket Number:</b>	22-PSDP-01
<b>Project Title:</b>	Power Source Disclosure Program - 2021 Reporting
<b>TN #:</b>	243374
<b>Document Title:</b>	Bear Valley Electric Service, Inc 2021 Power Source Disclosure Annual Report Repeated Application for Confidential Designation
<b>Description:</b>	N/A
<b>Filer:</b>	Eric Janssen
<b>Organization:</b>	Ellison Schneider Harris & Donlan LLP
<b>Submitter Role:</b>	Other Interested Person
<b>Submission Date:</b>	6/1/2022 10:21:17 AM
<b>Docketed Date:</b>	6/1/2022



**Andrew B. Brown**  
[abb@eslawfirm.com](mailto:abb@eslawfirm.com)

June 1, 2022

Mr. Drew Bohan  
Executive Director  
California Energy Commission  
1516 Ninth Street, MS-39  
Sacramento, CA 95814-5504

**RE: Repeated Application for Confidential Designation  
Bear Valley Electric Service, Inc. 2021 Power Source Disclosure Annual  
Report, Docket No. 22-PSDP-01.**

Dear Mr. Bohan:

Bear Valley Electric Service, Inc., (“BVES”) respectfully requests protection of certain information provided to the Commission in its accompanying 2021 Power Source Disclosure (“PSD”) Annual Report.

Information submitted to the Energy Commission can be deemed confidential without the need for a new application under California Code of Regulations, Title 20, Sections 2505(a)(1)(G) and 2505(a)(4) if BVES files a certification under penalty of perjury that the new information is substantially similar to the information previously granted confidentiality. By letter dated September 1, 2021, you approved BVES’ request for confidential designation for information submitted in BVES’ 2020 PSD Annual Report in docket 21-PSDP-01. (See Attachment A to this letter.) In your letter, you encouraged BVES to take advantage of the repeated application process in the future where appropriate.

BVES’ 2021 PSD Annual Report contains information that is substantially similar to its previously submitted 2020 PSD Annual Report and all facts and circumstances relevant to the confidentiality of the information remain unchanged. BVES observes that the 2020 PSD Annual Report contains additional information related to Greenhouse Gas Emissions, but notes that this information is substantially similar to last year’s report within this context.

Specifically, BVES requests that the following information remain confidential through December 31, 2022, in order to align this request with confidentiality protections provided for the same information at the California Public Utilities Commission for its Renewables Portfolio Standard Program:

Form	Information to be held confidential
PSDP Schedule 1	<ul style="list-style-type: none"><li>• Retail Sales in cell N7</li><li>• Net Specified Procurement in cell N8;</li><li>• Unspecified Power in cell N9;</li><li>• Net Specified Natural Gas in cell N11</li><li>• Gross MWh Procured in cell H38;</li><li>• Net MWh Procured in cell J38;</li><li>• Adjusted Net MWh Procured in cell K38;</li><li>• End Uses Other Than Retail Sales in cells B54:B55.</li></ul>
PSDP Schedule 3	<ul style="list-style-type: none"><li>• Adjusted Net Procured (MWh) in cells B21, B24, B25;</li><li>• Total Retail Sales in cell C27.</li></ul>

*I certify under penalty of perjury that the information contained in this repeated application for confidential designation is true, correct, and complete to the best of my knowledge. I also certify that I am authorized to make this repeated application and certification on behalf of Bear Valley Electric Service, Inc.*

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

Sincerely,



Andrew B. Brown  
Ellison Schneider Harris & Donlan LLP  
Attorneys for Bear Valley Electric Service, Inc.

Submitted via Confidential e-filing.

## **ATTACHMENT A**

California Energy Commission September 1, 2021 Letter Granting  
Bear Valley Electric Service, Inc.'s Application For Confidentiality for the  
2020 Annual Report Under the Power Source Disclosure Program  
(Docket No. 21-PSDP-01)

**DOCKETED**

<b>Docket Number:</b>	21-PSDP-01
<b>Project Title:</b>	Power Source Disclosure Program - 2020
<b>TN #:</b>	240100
<b>Document Title:</b>	CEC Response Letter BVES Confidentiality Application 6-1-21
<b>Description:</b>	N/A
<b>Filer:</b>	Pam Fredieu
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	10/20/2021 11:15:24 AM
<b>Docketed Date:</b>	10/20/2021



September 1, 2021

**Via Email**

Jedediah J. Gibson  
Ellison Schneider Harris & Donlan LLP  
2600 Capitol Avenue, Suite 400  
Sacramento, California 95816  
[jjg@eslawfirm.com](mailto:jjg@eslawfirm.com)

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

Dear Jedediah J. Gibson:

The California Energy Commission (CEC) received the confidentiality application(s) submitted by Bear Valley Electric Service, Inc. (applicant or BVES), on June 1, 2021, for specified data in the 2020 Annual Report under the Power Source Disclosure (PSD) program. Specifically, confidentiality is sought for:

**PSD Schedule 1**

- Retail Sales in Megawatt hours (MWh) and Specified/Unspecified procurement MWh totals in cells N7:N9
- Net Specified Natural gas in cell N11
- Gross MWh Procured in cell H38
- Net MWh Procured in cell J38
- Adjusted New MWh Procured in cell K38
- GHG Emissions in cell M38
- End Uses Other Than Retail Sales (MWh) in cell B54

**PSD Schedule 2**

- Total Unbundled Renewable Energy Credits (RECs) in MWh in cell E9
- Retired Unbundled RECs: Total Retired MWh in cells E12:E22

**PSD Schedule 3**

- Adjusted Net Procured (MWh) in cells B21, B24, and B25
- 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 the 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 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 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 December 31, 2021. 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, cell M38) 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, 95106), and pursuant to California Government Code section 6254.7.

Based on the remaining information, the confidentiality application is hereby approved with respect to all other data requested to 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](mailto:raj.dixit@energy.ca.gov) or (916) 776-3055.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Drew Bohan', with a stylized, flowing script.

Drew Bohan  
Executive Director