

DOCKETED

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July 15, 2022

Via Email

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**Application for Confidential Designation for Data in Power Source
Disclosure Program Annual Report, Docket 22-PSDP-01**

Dear Gregory Klatt:

The California Energy Commission (CEC) has received EDF Industrial Power Services, LLC's (applicant) application for confidential designation, dated June 1, 2022, covering the following data contained in the Power Source Disclosure Annual Report:

PSD Schedule 1
retail sales (cell L7), procurement data (columns H, I, J & K), GHG emissions data (column M), and derivative totals (cells N8-14).

PSD Schedule 2
procurement data (column E).

PSD Schedule 3
procurement data (column B), retail sales (cell C27), and GHG emissions intensity data (cell C29).

An application for confidential designation shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), ". . . if the applicant makes a reasonable claim that the [California] Public Records Act or other provision of law authorizes the [California Energy] Commission to keep the record confidential." The executive director's determination made in response to an application for confidential designation is subject to a reasonableness standard.

It is the applicant's burden to make a reasonable claim for confidentiality based on the California Public Records Act and other applicable laws.

The applicant asserts the data contains trade secret and proprietary information which is not made public by the applicant and that the data is considered confidential by the California Public Utilities Commission (CPUC). The applicant states the data can be aggregated with other similar data and made public.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 6254(k), 6276, 6276.44; Civ. Code, § 3426.1; Evid. Code, § 1060.) 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, the application shall state: (1) the specific nature of the advantage, (2) how the advantage would be lost, (3) the value of the information to the applicant, and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Civil Code section 3426.1(d) defines "trade secret" as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code, § 3426.1(d); *See also* Gov. Code, §§ 6254(k), 6276, 6276.44; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

The applicant has made a reasonable claim that the energy data is exempt as trade secrets. The applicant addresses the four elements identified in California Code of Regulations, title 20, section 2505(a)(1)(D), in summary form, stating that its customers may be harmed by the loss of confidentiality because other market participants such as other load serving entities can use this data to derive detailed estimates of applicant's specific procurement requirements and its current compliance position, including its RPS net short position.

The applicant notes that its RPS position could be used by wholesale suppliers to acquire a market advantage in commercial negotiations with the applicant for the

purchase and sale of RPS-eligible electricity products, resulting in the applicant and its retail customers paying more for power.

The applicant has not made a reasonable claim that the GHG emissions data including emissions intensity can be designated as confidential. Public Utilities Code section 398.4 requires every retail supplier that makes an offering to sell electricity that is consumed in California to disclose to consumers its electricity sources and the associated greenhouse gas emissions intensity for the previous calendar year. California Health & Safety Code section 38530 also requires the reporting and verification of GHG emissions. Finally, California Government Code section 6254.7 states all air or other pollution monitoring data, including data compiled from stationary sources, are public records.

The application requests the data be confidential until December 31, 2022. This term is consistent with the one-year period this type of data is considered confidential by the CPUC. (See Order Instituting Rulemaking, R.05-06-040, D.06-06-066 Appendix 2 and D.08-04-023 Appendix B, ESP Confidentiality Matrix Section V *Market Purchases of Energy and Capacity*.)

Executive Director's Determination

For the reasons stated, the energy data is granted confidentiality until December 31, 2022. The energy data may be released before December 31, 2022, if applicant-specific information is aggregated with information from all other statewide energy service providers. Confidentiality is denied for all GHG emissions information.

Note that load serving entities provide quarterly annual retail sales under Title 20, California Code of Regulations, section 1306. As set forth in California Code of Regulations, title 20, section 2507(f)(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.

You may request that the CEC determine the confidentiality of records for which the executive director denied confidential designation. You have 14 days to request that the CEC determine the confidentiality of the record. If you make such a request, the CEC will conduct a proceeding pursuant to the provisions in the California Code of Regulations, title 20, section 2508.

Gregory Klatt
July 15, 2022
Page 4

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 confidential records is issued by the CEC's chief counsel. Under California Code of Regulations, title 20, section 2507, the executive director may disclose records, or release records previously designated as confidential, in certain circumstances. The procedures for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set forth in the California Code of Regulations, title 20, sections 2506-2508.

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

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

Sincerely,

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

Drew Bohan
Executive Director