

**DOCKETED**

<b>Docket Number:</b>	22-PSDP-01
<b>Project Title:</b>	Power Source Disclosure Program - 2021 Reporting
<b>TN #:</b>	244158
<b>Document Title:</b>	CEC Response Letter Regarding 3 Phases Renewables' Application for Confidentiality
<b>Description:</b>	N/A
<b>Filer:</b>	Patty Paul
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	7/21/2022 1:54:17 PM
<b>Docketed Date:</b>	7/21/2022



**CALIFORNIA  
ENERGY COMMISSION**



July 21, 2022

**Via Email**

Gregory Klatt  
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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 3 Phases Renewables Inc.'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, and K),  
greenhouse gas (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)

The applicant asserts these data contains trade secret and proprietary information, which is not made public by the applicant, that the data is considered confidential by the California Public Utilities Commission (CPUC), and that the data is a trade secret subject to Government Code section 6254.7. The applicant states the data can be aggregated with other similar data and made public.

A properly filed Application for Confidentiality 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 [California Energy] Commission to keep the record confidential.” The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.)

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.)

California Code of Regulations, title 20, section 2505(a)(1)(D), further 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.

The application does not address each of these four requirements:

*The specific nature of the advantage* – The application addresses this, stating: “Applicant’s RPS “net short” position . . . could in turn be used to the company’s business disadvantage by wholesale suppliers in commercial negotiations with Applicant for the purchase and sale of RPS-eligible electricity products.”

*How the advantage would be lost* – The application addresses this, stating: “Disclosure of Applicant’s 2020 retails sales, procurement or GHG data that could be used to derive its 2020 retails sales could, in combination with [public] RPS-related procurement data, be used to derive Applicant’s RPS “net short” position.”

*The value of the information to the applicant* – The application does not provide a value or dollar amount. Instead, the application states that the information “could in turn be used to the company’s business disadvantage by wholesale suppliers in commercial negotiations with

Applicant for the purchase and sale of RPS-eligible electricity products.” However, this does not indicate the value of the information to the applicant.

*The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – No specific response to this requirement is provided.

The applicant has not made a reasonable claim that the data is a trade secret, as defined, or that the Public Records Act authorizes the CEC to keep the data confidential pursuant to California Code of Regulations, title 20, section 2505(a)(3)(A). The statement to support nondisclosure as a trade secret is incomplete as it does not address the specific value of the information to the applicant or the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Moreover, 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. Therefore, this data is already required to be publicly disclosed.

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 applicant’s confidentiality application fails to establish grounds for holding the data confidential. A revised application may be submitted that establishes each of the elements of confidentiality for trade secrets within two weeks of the date of this letter, and the CEC will maintain confidentiality of the documents until that time. After that date, if no revised application is received, the CEC may publicly disclose the data subject to this application.

Gregory Klatt  
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You may also 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.

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