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**CALIFORNIA
ENERGY COMMISSION**



**CALIFORNIA
NATURAL
RESOURCES
AGENCY**

July 21, 2022

Via Email

Rosemary Antonopoulos
Calpine Corporation
3003 Oak Road, Suite 400
Walnut Creek, California 94597
Rosemary.antonopoulos@calpine.com

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

Dear Rosemary Antonopoulos:

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

PSD Schedule 1
Unspecified Power purchase data in cell N9
Total Retail Sales information in cell N7

PSD Schedule 2
Total and Renewable Specific Purchases: Percent of Total
Retail Sales in cells C13-C25
Unspecified Power in cell B24
Total Retail Sales in cells B25, C27, C31

The applicant asserts these data contain trade secret and proprietary information, which is not made public by the applicant, and that the data should also be withheld from disclosure as the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record under Government Code section 6255. 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), 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 addresses each of these four requirements as follows:

The specific nature of the advantage – “If it is not protected from disclosure, information which can be used to calculate CPA’s total retail sales would allow sellers of power to know how much capacity CPA needs.”

How the advantage would be lost – “Sellers of power could then use this information to ‘manipulate the market,’ resulting in CPA and its retail customers paying more for power.”

The value of the information to the applicant – “[T]he disclosure of information which can be used to calculate CPA’s total retail sales could lead to increased costs to CPA and its customers and a release of customer-specific data.”

The ease or difficulty with which the information could be legitimately acquired or duplicated by others – No specific response to this requirement is provided, but the application does state that “CPA does not publicly disclose its total retail sales and related information which can be used to calculate CPA’s total retail sales. This type of information is

periodically provided to the CPUC and is protected from public disclosure by the CPUC.”

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), as described above.

Because we agree that the data may be held confidential as a trade secret, we do not address the applicant’s claim under Government Code section 6255.

The application requests the data be confidential for one year. This term is not 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*.) The CPUC typically considers this type of data confidential for one calendar year, that is until December 31, 2022.

Executive Director’s Determination

For the reasons stated, the data is granted confidentiality until December 31, 2022. The data may be released before December 31, 2022, 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, CCR, 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.

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 CCR, title 20, section 2505(a)(4).

Rosemary Antonopoulos
July 21, 2022
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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