

DOCKETED

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**CALIFORNIA
ENERGY COMMISSION**



September 6, 2022

Via Email

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

Dear Marcie Milner:

The California Energy Commission (CEC) has received Shell Energy Solutions' (applicant) application for confidential designation, dated July 20, 2022, covering the following data contained in the Amended Power Source Disclosure Annual Report:

PSD Schedule 1

Lines 7-14, Column N and Lines 18-89, 92-128 and 131-169 (H-N) (MWh procured, GHG emissions data).

PSD Schedule 2

Lines 9, 12-47 Column E (total retired unbundled RECs).

PSD Schedule 3

Lines 13-25, Column B (Adjusted Net Procured MWh); Line 27, Column C (total retail sales).

The applicant asserts the data contains trade secret and proprietary information, which is not made public by the applicant. 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 – Public disclosure of this information could competitively harm Shell Energy because the disclosure of its historical retail sales data could be used to derive Shell Energy's net short position, thereby placing Shell Energy at a competitive disadvantage in the wholesale and retail electricity markets and harming customers.

How the advantage would be lost – Knowing the net short position provides an advantage to generators that could increase Shell Energy's power procurement costs and the costs paid by its customers.

The value of the information to the applicant – Confidentiality ensures a fair wholesale and retail electricity market.

The ease or difficulty with which the information could be legitimately acquired or duplicated by others – Shell Energy restricts access to the subject information to Shell Energy employees and agents who agree to maintain the information on a confidential basis. Shell Energy has not revealed the confidential information to any individuals other than Shell

Energy employees, attorneys for Shell Energy, and applicable regulatory agencies.

The applicant has made a reasonable claim that the MW/h 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.

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, Government Code section 6254.7 states that 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 MW/h 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. Confidentiality is denied for all GHG emissions information.

Note that 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.

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

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such a request, the CEC will conduct a proceeding pursuant to the provisions in the California Code of Regulations, title 20, section 2508.

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).

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