

DOCKETED

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**CALIFORNIA
ENERGY COMMISSION**



September 6, 2022

Via Email

Gregory Klatt
3 Phases Renewables Inc.
1228 East Grand Avenue
El Segundo, California 90245
klatt@energyattorney.com

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

Dear Gregory Klatt:

Applicant, 3 Phases Renewables Inc., originally filed an application for confidential designation on June 1, 2022. By letter dated July 21, 2022, the California Energy Commission (CEC) denied applicant's request identifying deficiencies related to a claim of trade secrets. The CEC invited the applicant to supplement its application.

The CEC has received additional information from the applicant covering a request for confidentiality for 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)

PSD Schedule 2
procurement data (column E)

PSD Schedule 3
procurement data (column B), retail sales (cell C27)

The applicant asserts the 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 and supplemental information address each of these four requirements:

The specific nature of the advantage – The applicant addresses this, indicating that release of the data may impact the ability of the applicant to fairly negotiate energy contracts because the applicant’s RPS “net short” position could be used to the company’s business disadvantage by wholesale suppliers in commercial negotiations for the purchase and sale of RPS-eligible electricity products.

How the advantage would be lost – The applicant notes that sellers of RPS-eligible products could use the energy sales data to the advantage of the seller at the expense of the applicant. While the applicant has no such means to obtain inside information as to the costs of a generator to produce RPS-eligible electricity.

The value of the information to the applicant – The applicant states that the information is valuable to the extent that its release may result in harm to the applicant by increasing the price for contracted renewable power thus increasing the cost of power to the applicant's customers. This could impact the applicant's competitive position in the market.

The ease or difficulty with which the information could be legitimately acquired or duplicated by others – The applicant indicates that the energy data subject to the confidentiality application is not made public and is only provided to those employees that need it for their work and to regulators.

The applicant has 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 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 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.

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.

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

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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