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June 26, 2023

Via Email

Curry Stypula
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**Application for Confidential Designation for Data in Power Source
Disclosure Program Annual Report
Docket No. 23-PSDP-01**

Dear Curry Stypula:

The California Energy Commission (CEC) has received Commercial Energy of Montana, Inc. dba Commercial Energy of California's (applicant) application for confidential designation (TN 250461), docketed June 1, 2023, covering the following data contained in the Power Source Disclosure Annual Report:

- PSD Schedule 1 – Procurements and Retail Sales
 - Total of Retail Sales
 - Total of Net Specified Procurement
 - Total Unspecified Power (MWh)
- PSD Schedule 2 – Retired Unbundled Renewable Energy Credits (REC)
 - Total Retired Unbundled RECs in MWh
- PSD Schedule 3 – Annual Power Content Label Data
 - Total Retail Sales
 - Total Percentage of Retail Sales Cover by Retired Unbundled RECs

The applicant asserts that the data contains trade secret and proprietary information which is not made public by the applicant. The applicant requests that the identified information be kept confidential until December 31, 2023.

Confidentiality Claims

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 Public Records Act or other provision of law authorizes the 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. The applicant must make a reasonable claim for confidentiality based on the California Public Records Act and other applicable laws.

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, §§ 7927.705(k), 7930.005, 7930.205; Civ. Code, § 3426.1; 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, §§ 7927.705, 7930.005, 7930.205; 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.

Discussion

The application addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) by stating:

1. *The specific nature of the advantage* – The information can be used to determine the applicant’s market position directly or indirectly to the detriment of the applicant and its customers.
2. *How the advantage would be lost* – The applicant states that other market participants such as other load serving entities can use this data to derive detailed estimates of applicant’s specific procurement requirements and applicant’s current compliance position.
3. *The value of the information to the applicant* – Public release of the information may harm the applicant’s existing and future commercial opportunities and its ability to secure a return in the marketplace.
4. *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information is kept confidential by the applicant and has not been publicly disclosed.

The applicant has made a reasonable claim that the energy data is exempt as trade secrets. The applicant requests the data be confidential until December 31, 2023. 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, 2023. The data may be released before December 31, 2023, 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 California Code of Regulations, title 20, 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.

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

If you have questions, please email confidentialapplication@energy.ca.gov

Sincerely,

A handwritten signature in dark ink, appearing to be 'Drew Bohan', with a stylized, sweeping line extending to the right.

Drew Bohan
Executive Director