

DOCKETED

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CALIFORNIA ENERGY COMMISSION



July 28, 2023

Via email

Marcie Milner
Vice President, Regulatory Affairs
Shell Energy North America, LP
4445 Eastgate Mall, Suite 100
San Diego, California 92121
Marcie.milner@shell.com

Shell Energy North America Application for Confidential Designation for Data Submitted in Integrated Energy Policy Report Proceeding Docket No. 23-IEPR-02

Dear Marcie Milner:

The California Energy Commission (CEC) has received Shell Energy North America's (applicant) Application for Confidentiality dated June 30, 2023, (TN 250858) covering the following data:

- Form 7.1: Energy Service Provider Report of Loads and Resources Under Contract.

The applicant states that the data, which is highlighted on the spreadsheet and covers the years 2022-2026, includes historical and forecasted retail sales, peak demand, and customer count, should be designated confidential for three years from the application date to protect the confidentiality of proprietary trade secret information. The data may be publicly released if aggregated with other similar data.

Confidentiality Claims

An application for confidential designation 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 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. It is the applicant's burden to 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, 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 applicant addresses the four elements necessary to establish a trade secret claim (Cal. Code Regs., tit. 20, § 2505(a)(1)(D)) for the accompanying information as follows:

- 1) *The specific nature of the advantage* – The information reflects the applicant’s customers’ electricity demand and cost information for the applicant to procure energy to meet that demand. Public disclosure of this information would place applicant in a competitive disadvantage in the wholesale and retail electricity markets.
- 2) *How the advantage would be lost* – Public disclosure of the information could be used by competitors to adjust their business strategies to gain a competitive advantage and thus damage the applicant.
- 3) *The value of the information to the applicant* – The information could be used by applicant’s suppliers or customers when negotiating the price and terms of procurement transactions or retail contract terms to the disadvantage of the applicant.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The data is not disclosed publicly and is treated as confidential by the applicant.

The applicant has made a reasonable claim that the information submitted is exempt from disclosure as business proprietary or trade secrets.

Therefore, the CEC designates the above-described information as confidential for three years.

Executive Director's Determination

For the reasons stated above, confidentiality is approved as to the information submitted in TN 250858 for a period of three years.

Note that in addition to the Form 7.1 spreadsheet submitted with the application for confidential designation, the applicant filed an officer verification in support of the submitted data and a cover letter dated June 30, 2023. These two documents do not contain any proprietary data, were not identified in the application, and are not designated confidential.

Be advised that under title 20, California Code of Regulations 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 records is issued by the CEC's chief counsel. Under title 20, California Code of Regulations section 2507, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the title 20, California Code of Regulations, sections 2506-2508.

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

Sincerely,



Drew Bohan
Executive Director