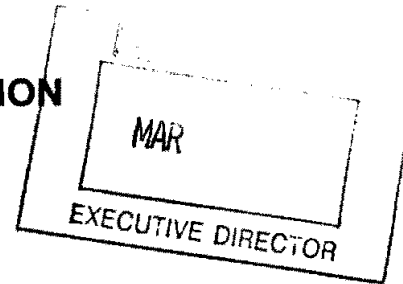


APPLICATION FOR CONFIDENTIAL DESIGNATION
(Title 20 Cal. Code. Regs., § 2505 et seq.)



TO: ENERGY COMMISSION EXECUTIVE DIRECTOR, MS-39

ENERGY COMMISSION CONTRACT/DOCKET NO. (IF APPLICABLE):

APPLICANT: APS ENERGY SERVICES

ADDRESS: 400 E. Van Buren St., Suite 750
Phoenix, AZ 85004

DOCKET	
00-SB-1305	
DATE	FEB 28 2007
RECD.	MAR 01 2007

- 1(a). Title, date, and description (including number of pages) of the information or data for which you request confidential designation. **Information or data Seeking a designation of confidentiality must be included with this application.**

2006 Annual Power Source Disclosure Retail Provider's Report ("Report")

- 1(b). Specify the part(s) of the information or data for which for which you request confidential designation.

Schedule 1: Power Purchases and Resales – Confidential designation requested for all information and data.

Schedule 2A: Retail Sales – Confidential designation requested for all information and data, except product names.

Schedule 2B: Balancing Sheet – Confidential designation requested for all information and data.

Schedule 2C: Power Content Label Calculator – Confidential designation requested for megawatt-hour ("MWh") data for Specific Purchases.

2. State and justify the length of time the Energy Commission should keep the information or data confidential.

Confidential designation requested for one year, starting from date of submittal. After one year, 2006 retail sales data reported to Energy Information Agency ("EIA") by Applicant will become public, thereby allowing third parties to calculate MWh data contained in Applicant's Report.

- 3(a). State the provision(s) of the Public Records Act (Gov. Code, § 6250 et seq.) or other law that allows the Energy Commission to keep the information or data confidential, and explain why the provision(s) apply to that material.

The Public Records Act ("PRA") contains two exceptions to the general rule of disclosure for public records that are applicable to the information and data for which Applicant is seeking a confidential designation.

First, the PRA allows state agencies to withhold "records the disclosure of which is exempted or prohibited pursuant to federal or state law..." (Gov't Code § 6254(k).) Relevant here is the Uniform Trade Secrets Act (Civ. Code § 3526 et seq.), which prohibits the disclosure of trade secrets against the owner's will, as well as the trade secret privilege (Evid. Code § 1060), which provides that the owner of a trade secret has the right to refuse to disclose the secret, and to prevent others from disclosing it, provided exercise of that right "will not tend to conceal fraud or otherwise work injustice." As defined in Civil Code § 3426.1(d), "trade secret" means:

"information, 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."

Second, the PRA provides that state agencies may withhold records that are not exempt from disclosure under a specific exemption where "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov't Code § 6255.)

As explained in more detail below, the trade secret exception is applicable to the historical supply and retail sales data for which Applicant requests a confidential designation because wholesale suppliers and Applicant's competitors can obtain economic value, to Applicant's economic harm, from the data's disclosure or use. In addition, the public interest exception is applicable because disclosure of the data could result in Applicant paying higher prices for electricity supplies, thereby artificially reducing the competitiveness of direct access service offered by Applicant (and potentially driving Applicant out of the market), without any corresponding public benefit.

- 3(b). Discuss the public interest in nondisclosure of the material submitted for a confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Applicant requests a confidential designation for all MWh data contained in its Report for the obvious reason that the data reveals Applicant's electricity supply requirements for 2006, as well as providing significant insight into Applicant's procurement strategy.¹ That information could be used by wholesale suppliers to better estimate Applicant's supply requirements for 2007, and to determine what types of resources Applicant is likely to need to meet those requirements, thereby enabling the suppliers to extract higher prices from Applicant in negotiations for supply arrangements than they would otherwise. In addition, the information could be used by Applicant's competitors to undermine its marketing efforts and business strategy, so as to increase the probability that customers will chose them rather than Applicant to be their retail service provider.

None of these possible negative consequences for Applicant would serve the public interest. Indeed, disclosure would disserve the public interest in that it could result in the artificial inflation of wholesale prices paid by Applicant, which will then need to pass on the higher costs to consumers. Also, at some point, the additional costs will make it impossible for Applicant and other non-utility retail providers to compete in California, thereby reducing the competitive options available to consumers.

4. State whether the information or data can be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why.

The data for which Applicant requests a confidential designation cannot be aggregated or masked in such a way as to protect its confidentiality.

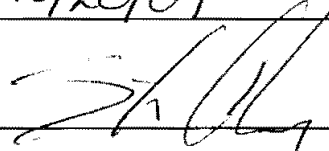
¹ Applicant is requesting a confidential designation for the retail sales data contained in the Report because that data, in combination with the reported percentages for different types of resources, to calculate the MWh data reported by Applicant.

5. State how the material is kept confidential by the applicant and whether it has even been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred.

Applicant regularly maintains the confidentiality of data in question in the normal course of business. While Applicant is required to report electricity supply data to the California Public Utilities Commission ("CPUC"), and is also required to report historical sales data to the EIA and the CPUC, those agencies keep the data confidential for at least one year.

I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the applicant.

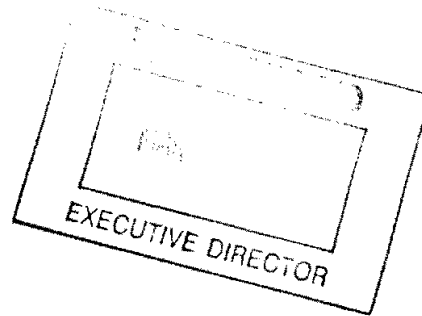
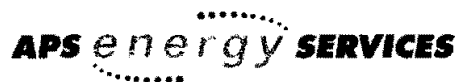
Dated: 2/28/07

Signed: 

Name: Stacy Aguayo

Title: Manager of Regulatory Affairs

Representing: APS Energy Services



February 28, 2007

California Energy Commission
Docket Office
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: 2006 Annual Power Source Disclosure

To Whom It May Concern:

Please accept APS Energy Services (APSES) enclosed filing for the 2006 Annual Power Source Disclosure report.

Enclosed is the following information:

- 2006 Quarterly Power Content Labels
- Power Source Disclosure Attestation
- Confidential Annual Power Source Disclosure Report

APSES is also submitting an Application for Designation of Confidential Records, pursuant to Section 25322 of the Public Resources Code and Section 2505(a) of Title 20 of the California Code of Regulations. The confidential application is being submitted specifically for the Annual Power Source Disclosure Report.

If you have any questions about this disclosure, please call me at (602) 744-5140.

Sincerely,

A handwritten signature in black ink, appearing to read "Jenine Schenk". The signature is written in a cursive, flowing style.

Jenine Schenk
Regulatory and Markets Consultant

Enclosures

Confidential
Portion
Omitted