

COMPLETED

June 1, 2013

Mr. Robert Oglesby
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814



Subject: Application of Calpine PowerAmerica-CA, LLC for Confidential Designation of Information Contained in the Annual Report to the California Energy Commission: Power Source Disclosure Program for Year Ending 12/31/2012

Dear Mr. Oglesby,

Calpine PowerAmerica – CA, LLC (“CPA”) requests that certain information included as part of its completed Proposed Annual Report to the California Energy Commission: Power Source Disclosure Program (“PSDP Report”) be designated confidential pursuant to Title 20 Cal. Code. Regs., § 2505 et seq.

In support of its application for confidentiality designation, CPA provides the following information:

Contact Information

Applicant: Calpine PowerAmerica-CA, LLC
Address: 717 Texas Avenue
Houston, TX 77002

All correspondence regarding this filing should be sent by letter and transmitted via facsimile or electronically to the attention of:

Jason Armenta
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Calpine Corporation
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Description of Confidential Information

CPA seeks confidential treatment of certain designated portions of its Report that have been redacted in the public version of the PSDP Report. The confidential portions of the Report relate to CPA’s total retail sales.

Specific Indication of Those Parts of the Record to Be Kept Confidential

CPA requests confidential treatment of cells P10, R10, Q35 and Q38 in the PSDP Schedule 1 tab of the PSDP Report. This information has been redacted in the public version of the PSDP Report.

CPA requests confidential treatment of cells D24-D25, E14-E25, C27-E27, C29, D29 and C31 in the PSDP Schedule 2 tab of the PSDP Report. This information has been redacted in the public version of the PSDP Report.

Length of Time the Information Should Be Kept Confidential

CPA requests that the information regarding CPA's total retail sales be kept confidential, and not publicly disclosed, for a period of one year. Protecting this information from public disclosure for one year is consistent with the confidentiality protection given to this type of information by the California Public Utilities Commission ("CPUC").¹

Provisions of Law Allowing the Commission to Keep the Documentation Confidential

The designated information is market sensitive information that constitutes a trade secret under California law. A trade secret is "information . . . 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."² To determine whether certain information is a trade secret, one must evaluate whether the matter sought to be protected is information (1) which is valuable because it is unknown to others, and (2) which the owner has attempted to keep secret.³ If it is not protected from disclosure, information which can be used to calculate CPA's total retail sales would allow sellers of power to know how much capacity CPA needs. Sellers of power could then use this information to "manipulate the market," resulting in CPA and its retail customers paying more for power.⁴ For these reasons, CPA has taken steps to maintain the secrecy of this information.

In addition, Government Code section 6254.15 exempts corporate proprietary information, including trade secrets, from disclosure under the California Public Records Act ("PRA"). Government Code section 6255 also permits public agencies to withhold any public record where "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." These provisions govern the CEC's treatment of the designated information in relation to a PRA request. As discussed above, the disclosure of information which can be used to calculate CPA's total retail sales could lead to increased costs to CPA and its customers. This potential harm is not outweighed by any potential public interest in the information being disclosed.

¹ See CPUC Decision 06-06-066, as modified by Decision 08-04-023.

² Civ. Code § 3426.1(d).

³ *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1454.

⁴ See CPUC Decision 08-04-023, mimeo at 13-14.

CPA is providing the confidential, unredacted, version of the Report in a sealed envelope. CPA requests that the sealed envelope only be opened if the Executive Director determines the designated information will be designated confidential. If the Executive Director determines the designated information should not be protected from public disclosure, CPA requests that the sealed envelope be returned unopened.

Aggregation and Masking of Confidential Information

The total retail sales information which CPA seeks to protect from disclosure has been redacted as minimally as possible in the "public" version of the Report. This information, however, may be disclosed if it is aggregated with the total retail sales of all other Energy Service Providers or Load Serving Entities, and steps are taken to ensure CPA specific retail sales information cannot be ascertained from the aggregated information.

The Submitted Information is Presently Confidential

CPA does not publicly disclose its total retail sales and related information which can be used to calculate CPA's total retail sales. This type of information is periodically provided to the CPUC and is protected from public disclosure by the CPUC.

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: June 1, 2013

Calpine PowerAmerica-CA, LLC



Jason Armenta
Director

Attachments