

# DOCKETED

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<b>Project Title:</b>	Rulemaking Proceeding for SB-1305 - Proposed Amendment of Regulations Governing Electricity Generation Source Disclosure
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**CALIFORNIA ENERGY COMMISSION**1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

June 14, 2016

Jason Armenta  
Director  
Calpine Corporation  
717 Texas Avenue, Suite 1000  
Houston, Texas 77002

RE:           **Application for Confidential Designation for Information Contained in  
Power Source Disclosure Annual Report  
Docket No. 00-SB-1305**

Dear Mr. Armenta:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of Calpine PowerAmerica-CA, LLC (Applicant). The application seeks confidential designation for the following data contained in Applicant's Annual Report under the Power Source Disclosure Program (PSDP):

- 1) *Schedule 1: Cells O10, Q10, P24, P28; and*
- 2) *Schedule 2: Cells C27–D27, C29–D29, C31, and D14–D25.*

The application states that confidentiality is sought for market sensitive information that constitutes a trade secret. Applicant states that this information may be disclosed if it is aggregated with the total retail sales of all other Energy Service Providers or Load Serving Entities, and if steps are taken to ensure Applicant's specific retail sales information cannot be ascertained from the aggregated information. The information has not been previously disclosed to the public.

A properly filed Application for Confidentiality 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 [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.)

California courts have traditionally used the following definition of trade secret:

a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

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, or its disclosure would otherwise cause loss of a competitive advantage, an application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to an applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application addresses these four elements: 1) the application states that the information contains trade secrets or otherwise commercially sensitive data, the disclosure of which would cause loss of a competitive advantage; 2) if publicly disclosed, the information could be used to calculate Applicant's total retail sales, which would allow sellers of power to know how much capacity Applicant needs and to manipulate the market; 3) maintaining secrecy of the information protects Applicant and its retail customers from paying more for power; 4) Applicant has taken steps to maintain the secrecy of the information.

The application is clear that confidentiality is being sought for trade secret information related to energy retail sales information. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the requested information from public disclosure.

Applicant requests that the information be kept confidential for one year. This requested time period is appropriate, because it represents the amount of time the information is expected to retain validity and market value, and because any lesser period of time would undermine existing confidentiality protection of the same or substantially similar data held by the California Public Utilities Commission. However, Applicant supports earlier public release of the information if Applicant-specific information is aggregated with information from all other Energy Service Providers or Load Serving Entities to remove all individually identifying information.

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For the reasons stated above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential until June 1, 2017, but can be disclosed prior to that date if aggregated with other energy purchase and retail sales data on a statewide level.

Be advised that persons may petition to inspect or copy records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

If you have any questions concerning this matter, please contact Michelle Chester, Staff Counsel, at (916) 651-2935.

Sincerely,



Robert P. Oglesby  
Executive Director

cc: Docket Unit, California Energy Commission  
Kevin Chou, California Energy Commission, Renewable Energy Office