

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Improve
Public Access to Public Records Pursuant to
the California Public Records Act.

Rulemaking 14-11-001
(Filed November 6, 2014)

**NOTICE OF THE INDEPENDENT STORAGE PROVIDERS REGARDING
MODIFICATIONS OF AND ADDITIONS TO MATRIX TOPICS**

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September 22, 2017

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**NOTICE OF THE INDEPENDENT STORAGE PROVIDERS REGARDING
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Pursuant to the August 18, 2017 Assigned Commissioner’s Ruling Regarding Phase 2B Development of Confidential Matrices (“Ruling”), Central Valley Gas Storage, L.L.C., Gill Ranch Storage, LLC, Lodi Gas Storage, L.L.C., and Wild Goose Storage, LLC (collectively the “Independent Storage Providers” or “ISPs”) submit notice setting forth proposed modifications of, and additions to, matrix topics.

I. PROPOSED MATRIX TOPIC MODIFICATIONS

The Ruling sets forth four proposed matrix topics -- (1) personally identifiable information of regulated entity customers protected by Gov’t. Code § 6254(c); (2) investigations of regulated entities covered by Gov’t. Code § 6254(f); (3) competitive information covered by Gov’t. Code § 6255(a); and (4) critical infrastructure covered by Gov’t. Code § 6254(e). The Independent Storage Providers support the development of matrices under these four topic headings, but note with respect to the last listed item, the scope of information exempted from disclosure pursuant to Gov’t. Code § 6254(3) is very narrow, and excludes an important, relevant form of critical infrastructure.¹ The matrix should be expanded to include critical energy infrastructure as defined in 18 CFR § 388.113(c)(2) and protected from disclosure when

¹ Gov’t. Code Section 6254(e) exempts from disclosure “geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.”

provided to a stated agency pursuant to 6 U.S.C. § 133(a)(1)(E). The Commission previously recognized that critical infrastructure information is appropriately designated confidential and withheld from disclosure.² Accordingly the Independent Storage Providers propose that this matrix topic be modified to include “Critical Infrastructure Information protected from disclosure pursuant to 6 U.S.C. § 133(a)(1)(E) and information covered by Gov’t. Code § 6254(e).”

II. PROPOSED ADDITIONAL MATRIX TOPICS

A. Financial Information

Financial information including but not limited to revenues, expenses and investments,³ should be designated as a matrix topic.

Financial statements are protected from disclosure by Gov’t. Code 6254(k) which provides that the following documents do not require disclosure under the California Public Records Act (“PRA”): “[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.” The general privilege not to disclose trade secrets set forth in Evidence Code Section 1060 is applicable to the PRA pursuant to Gov’t. Code section 6254(k). Trade secrets under Evidence Code Section 1060 is defined by reference to Civil Code Section 3426.1. Specifically, a type of information from which an entity (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, is protected from disclosure. The Commission

² Decision 16-08-024, p. 25.

³ This is not a reference to information otherwise contained in public filings (e.g., 10-K’s) prepared by publicly-traded companies; such information is not considered confidential.

has recognized that competitively-sensitive documents that fall under the trade secrets privilege pursuant to California Evidence Code Section 1060 and California Civil Code Section 3426.1 are confidential and should not be subject to disclosure.⁴

Financial information meets the two requirements from Civil Code section 3426.1(d). First, financial information such as balance sheets and income statements contain very detailed and extensive financial information about a company. Economic value is derived from protecting this information against disclosure because such information could provide a competitor a strategic roadmap as to a company's investments, overhead, costs, margins, assets, liabilities, cash flow, and overall financial condition. Second it is standard practice for a company to take reasonable efforts to maintain the secrecy of its financial records including continuously requesting confidential treatment for its financial statements in all filings with the Commission.

B. Customer Contracts

Customer contracts (including customer lists) should be designated as a matrix topic and be predetermined as confidential.

While the ISPs are unaware of the regulatory requirements for other utility industries, each of the ISPs is required to submit to the Commission, on a monthly basis, new firm and interruptible storage contracts which have been executed with customers and under which service has commenced in the prior month. Like financial information discussed above, customer contracts are protected from disclosure by Gov't. Code section 6254(k). Specifically customer contracts meet the definition of trade secrets under Evidence Code Section 1060 which is defined by reference to Civil Code Section 3436.1.

⁴ Decision 16-08-024, p. 25.

Maintaining the confidentiality of negotiated contracts is a quintessential feature of contract negotiation in competitive markets.⁵ ISPs and their customers have an interest in keeping competitively sensitive and commercially valuable information – in this case part of the cost of providing their product or service – out of the hands of their competition.⁶ The information contained in ISP storage contracts has commercial value because it reveals the key terms and conditions, including rates, under which an ISP is willing to contract to provide storage services. Public disclosure of an ISP’s existing and historic contracts can impede full and fair competition. If the terms and conditions under which an ISP has agreed to charge for storage services is disclosed, the ISP’s competitors, including would-be new market entrants, are made privy to the most sensitive commercial information an ISP has -- prices and customer identity. Clearly, an ISP derives independent economic value, actual or potential, from not having its customer contracts being generally known to the public or to other persons who can obtain economic value from its disclosure or use. Given this fact, the ISPs take precautions to protect these documents from disclosure. In short, customer contracts meet the definition of trade secret as defined by Evidence Code Section 1060.

⁵ The ISPs are authorized to provide competitive services at market-based rates.

⁶ The Commission, in recognition of the sensitive nature of ISP customer contracts, authorized each in their Certificates of Public Convenience and Necessity to submit such contracts under seal. (*See, e.g.,* D.09-10-035, Ordering Paragraph 25).

Respectfully submitted this September 22, 2017, at San Francisco, California.

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⁷ In accordance with Rule 1.8(d), Wild Goose's and Lodi's representative is authorized to sign these Comments on behalf of the ISPs.