

DOCKETED

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VIA ELECTRONIC FILING

Mr. Robert Oglesby, Executive Director
California Energy Commission
1516 Ninth Street, MS-39
Sacramento, California 95814

**Re: Sonoran Energy Project (02-AFC-1C)
Application for Designation of Confidential Air Quality Data**

Dear Mr. Oglesby:

AltaGas Sonoran Energy Inc. (“AltaGas Sonoran”) submits this Application for Designation of Confidential Records (“Application”) with respect to the attached information pertaining to Air Quality (**Attachment A**). AltaGas Sonoran is submitting this Application as part of its Petition to Amend (“PTA”) the Sonoran Energy Project (“SEP” or the “Project”), which addresses the topic area of air quality in detail.

Through this letter, AltaGas Sonoran requests confidential designation of the submitted information under Title 20, California Code of Regulations, section 2505. In addition, AltaGas Sonoran understands that, pursuant to Title 20, California Code of Regulations sections 2505(a)(2) and (a)(3)(B), the information will not be publicly disclosed while this Application for Confidential Designation, or any appeal of the Commission’s determination regarding this Application, remains pending.

AltaGas Sonoran provides the following in support of its Application:

(a) *Description/Separation of the Confidential Records.*

Attachment A, which is marked “Confidential,” is the subject of this Application and contains two Microsoft Excel workbooks, which includes, but are not limited to, proprietary equations, formulas, and calculations. This information, developed by Sierra Research, Inc. (“Sierra Research”) is used to produce the air quality data and analysis submitted by AltaGas Sonoran in response to the Commission Staff’s Data Request No. 1 as such relates to the above-referenced proceeding.



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(b) Specific Indication of Those Parts of the Record to be Kept Confidential.

With respect to Attachment A, AltaGas Sonoran requests that the Commission designate the records described in Paragraph (a) above as confidential in their entirety. The results of the equations, formulas, and calculations contained in the Microsoft Excel workbooks are included in the PTA as Appendix 3.1B and Appendix 3.1C, Attachment 3.1C-1. AltaGas Sonoran agrees that Appendix 3.1B and Appendix 3.1C, Attachment 3.1C-1 are not subject to confidential treatment. Instead, this request asks that the equations, formulas, and calculations contained in these Microsoft Excel workbooks, and the workbooks themselves, be kept confidential for the reasons set forth herein.

(c) The Length of Time the Record Should be Kept Confidential.

Attachment A should be kept confidential permanently. Consistent with applicable law, this information should be held confidential indefinitely in order to protect the proprietary and confidential information identified therein as confidential trade secrets as further described below. AltaGas Sonoran also requests that any Commission Staff member who accesses this information sign or confirm that they have signed the appropriate non-disclosure agreement prior to accessing this information.

(d) Provisions of Law Allowing the Commission to Keep the Documentation Confidential: Disclosure of the Information is Against Public Interest.

The Public Records Act exempts “trade secrets” from public disclosure, including “any formula, plan,...production data, or compilation of information..., which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service...and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.” (Govt. Code § 6254.7(d).)

The California Civil Code Section 3426.1(d) defines a “trade secret” as follows:

(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



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(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The Commission's regulations provide for information to be designated as confidential if it "contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage." (Title 20, Cal. Code Regs. § 2505(a)(1)(D).)

The equations, formulas, and calculations contained in the Microsoft Excel workbooks, developed by Sierra Research, constitute trade secrets as defined by the California Civil Code, and are thus exempt from disclosure under the Public Records Act. This information qualifies as a trade secret under Section 3426.1(d) of the California Civil Code for the following reasons.

First, this information has an independent economic value to AltaGas Sonoran's consultant, Sierra Research, as this information provides the basis for the air quality data and analysis produced by Sierra Research, and has taken substantial time and resources for Sierra Research to develop. Access to this information by others, such as competitors, would allow the user to derive an economic value from disclosure or use, as the user could use the information to produce air quality data and analysis in return for payment, or in lieu of paying Sierra Research for such analysis. Furthermore, disclosure of the information would give such a user a business advantage, as the information would give the user the ability to produce air quality data and analysis using Sierra Research's proprietary methods, without the expenditure of time and resources that Sierra Research has invested to develop such equations, formulas, and calculations.

This information is also subject to confidential designation under the Commission's regulations, as this information is a trade secret, as described above. Moreover, disclosure of this information would cause a loss of competitive advantage to Sierra Research. Disclosure of Sierra Research's proprietary equations, formulas, and calculations to the public would allow Sierra Research's competitors and others to review and obtain Sierra Research's proprietary equations, formulas, and calculations for free, rather than for the full monetary value of such information.

(e) Aggregation and Masking of the Confidential Information.

AltaGas Sonoran and Sierra Research have considered whether it would be possible to aggregate or mask the information. The confidential information can be masked by converting the formulas in the workbook to values. Accordingly, Sierra Research has indicated a willingness to provide a static copy of the workbook to the public without restriction. However, there is no feasible method of aggregating or masking the formulas, equations, and calculations that the



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Commission Staff has requested without rendering the information provided useless and therefore nonresponsive to Staff's request for a "live" version. The results of calculations performed using the information have previously been provided to Commission Staff in Portable Document Format ("PDF"). In this format, the results of the calculations are presented while protecting the proprietary equations, formulas, and calculations. Sierra Research has no objection to the continued distribution of PDF versions of the results of calculations to the public.


(f) *The Submitted Information is Presently Confidential.*

Attachment A is subject to efforts to maintain the secrecy of the information contained therein and, as such, has never been released publicly, is used by and available only to (1) employees of Sierra Research, who are instructed not to publicly disclose this information; (2) consultants to Sierra Research who have signed a confidentiality/ nondisclosure agreement with Sierra Research; or (3) staff of the Mojave Desert Air Quality Management District (the "District") with a request for confidentiality under Government Code § 6254.7(d).¹ Furthermore, AltaGas Sonoran, on behalf of Sierra Research, is providing this information to Commission Staff on the condition that it will not be made public or provided to any outside party, or used by anyone at the Commission for personal gain.

I certify under penalty of perjury that the information contained in this Application is true, correct, and complete to the best of my knowledge. As an attorney for AltaGas Sonoran, I am authorized to make the above certification and to submit this Application on the behalf of AltaGas Sonoran.

Dated: November 12, 2015

Stoel Rives LLP

By: 
Melissa A. Foster
Attorneys for AltaGas Sonoran Energy Inc.

¹ The District staff have requested and are being provided only the workbook related to Appendix 3.1B.