

DOCKETED

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January 29, 2016

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

Re: High Desert Power Project (97-AFC-1C): Application for Confidential Designation

Dear Mr. Oglesby:

Pursuant to Sections 2501 *et seq.*, of Title 20 of the California Code of Regulations, High Desert Power Project, LLC (“HDPP”) submits this *Application for Confidential Designation* for confidential financial information contained in the updated Exhibit F to the *High Desert Power Project Recycled Water Feasibility Study Report* filed on November 3, 2014.

Please feel free to contact me at (916) 447-2166 should you have any questions or require additional information.

Sincerely,



Jeffery D. Harris
Ellison, Schneider & Harris L.L.P.

Attorneys for High Desert Power Project, LLC

APPLICATION FOR CONFIDENTIAL DESIGNATION
High Desert Power Project (97-AFC-1C)
High Desert Power Project, LLC (“HDPP”)

1. *Specifically indicate those parts of the record which should be kept confidential.*

HDPP requests confidential designation for the following document and all information contained therein: Updated Exhibit F to the High Desert Power Project Recycled Water Feasibility Study Report, November 3, 2014, *Impact of 100% Recycled Water Use on Facility Operations and Maintenance Costs*. For the purposes of this application, the above-referenced documents are collectively referred to below as the “Confidential Records”.

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

Consistent with applicable law, the Confidential Records should be held confidential for the life of the High Desert Power Project in order to protect the proprietary and confidential trade secret information. Thus, this information should be kept confidential until the completion of decommissioning and closure activities for the facility, which will be described in a closure/decommissioning plan submitted to Commission Staff at least 12 months prior to commencing the closure activities.

3. *Cite and discuss (i) the provisions of the Public Records Act or other law which allow the commission to keep the record confidential and (ii) the public interest in nondisclosure of the record.*

There are several applicable provisions of the Public Records Act that requires that the Commission keep the Confidential Records confidential as the documents contain corporate financial, proprietary, and trade secret information. Section 6254.15 of the Government Code exempts from disclosure “corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California.” Section 6254.7(d) of the Government Code exempts “trade secrets”¹ 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

¹ The California Civil Code Section 3426.I(d) further 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
 - (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

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business advantage over competitors who do not know or use it.” Finally, Section 6254(e) of the Government Code exempts from disclosure “[g]eological 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.”

Section 6254.14 applies to exempt the Confidential Records from disclosure as the Confidential Records contain confidential corporate financial and proprietary information, which is being provided to the Commission for the purpose of permitting the agency to review HDPP Petition for modification of Condition of Certification SOIL&WATER-1 that will implement reliable primary and backup water supplies, or in the vernacular, “drought-proof” the Facility. The Petition sets forth a water supply strategy that both: (a) maximizes the Facility’s use of recycled water (“Recycled Water”), and (b) provides HDPP with continued access to other water supply sources that must be blended with available Recycled Water to drought-proof the Facility as described below. Corporate financial information in the Confidential Records is used to examine and explain why converting to 100% recycled water is economically infeasible for the facility. The Confidential Records also contain corporate proprietary information, including trade secret information such as operating expenses for the High Desert Power Project to produce and sell electricity, resources used and possessed by the corporation, and net generation from the facility. Thus, the Confidential Records are protected from disclosure under Section 6254.14.

Section 6254.7(d) applies to the Confidential Records as the Confidential Records contain trade secrets, including plans, production data, and other compiled information which is known only to certain individuals within HDPP, and is used by HDPP to make business and investment decisions, and to generate and electricity. Such information gives HDPP a business advantage over competitors who do not know or use it. Public disclosure would affect HDPP’s ability to participate in the California Independent System Operator markets or otherwise effectively negotiate and secure contracts.

Section 6254(e) applies to the Confidential Records as the Confidential Records contain information regarding facility processes, production data, operations, and other utility system development information that is protected under the Public Records Act as these records are being provided in confidence to the Commission.

Finally, nondisclosure of the Confidential Records is in the public interest. The Confidential Records are being provided to the Commission to support consideration of alternative water supplies for the facility. It is in the public’s best interest that an entity can provide confidential and proprietary information to the Commission for review without being concerned that such information will be publicly disclosed to the detriment of the entity. The many exemptions contained in the Public Records Act for confidential and proprietary business information supports the conclusion that there is a strong policy reasons to allow companies to provide government agencies such information without fears or concerns over loss of control over confidential and proprietary business information.

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4. *State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

No feasible method of aggregating or masking other information in the Confidential Records could be identified that would not either disclose the information or render the information provided in the Confidential Records useless.

5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

HDPP has not disclosed the Confidential Records to anyone other than its and its affiliates’ employees, attorneys, auditors and consultants and to certain contract counterparties for purpose of credit checks. Moreover, this information has not been disclosed to any such persons except on a “need-to-know” basis pursuant to confidentiality agreements.

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 belief. I am authorized to make the Application and Certification on behalf of HDPP.

Dated: January 29, 2016

ELLISON, SCHNEIDER & HARRIS L.L.P.



By: _____
Jeffery D. Harris
Ellison, Schneider & Harris L.L.P.

Attorneys for High Desert Power Project, LLC