

DOCKETED

Docket Number:	15-AFC-02
Project Title:	Mission Rock Energy Center
TN #:	216300
Document Title:	Response to Application for Confidentiality - CAISO Queue Cluster 9 Phase Report
Description:	N/A
Filer:	Sabrina Savala
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	3/1/2017 9:55:01 AM
Docketed Date:	3/1/2017

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

March 01, 2017

Samantha G. Neumyer
Greggory L. Wheatland
Ellison, Schnieder, Harris & Donlan LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816

**RE: Application for Confidential Designation for CAISO Queue Cluster
 9 Phase Report and Attachment
 Mission Rock Energy Center
 Docket No. 15-AFC-02**

Dear Ms. Neumyer and Mr. Wheatland:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of Mission Rock Energy Center, LLC (Applicant). The application seeks confidential designation for the following documents (Confidential Records):

- 1) California Independent System Operator Queue Cluster 9 Phase I Report Appendix A-Q1334; and
- 2) California Independent System Operator Queue Cluster 9 Phase I Report Appendix A-Q1334, Attachment 3.

The application states that confidentiality is sought for commercially sensitive transmission planning and cost information. No feasible method of aggregating or masking the Confidential Records could be identified, and the application states that the Confidential Records have not been disclosed publicly.

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, citing the Restatement of Torts, vol. 4, § 757, comment 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 Confidential Records contain trade secrets related to the specific technologies employed and the commercially valuable information related to Applicant's interconnection queue; 2) disclosure of the Confidential Records would allow competitors to ascertain planning and cost information that may affect bids in competitive solicitation; 3) the Confidential Records have independent economic value from not being generally known to the public or to Applicant's competitors, who can obtain economic value from its disclosure and use; and 4) the information cannot be legitimately acquired or duplicated by others because the Confidential Records constitute "Confidential Information," as defined by the California Independent System Operator Tariff and Applicant is obligated not to disclose such Confidential Information to persons not employed or retained by Applicant, with limited exceptions.

Government Code section 6254.15 exempts from disclosure under the California Public Records Act 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. In this case, the Confidential Record is being supplied to the California Energy Commission in response to Data Requests issued by California Energy Commission Staff as part of the processing of Applicant's Application for Certification to the Commission Decision on the Mission Rock Energy Center.

Ms. Neumyer and Mr. Wheatland
March 1 , 2017
Page 3

The application is clear that confidentiality is being sought for trade secret information related to the permitting of a siting project within the state. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the Confidential Record from public disclosure.

Applicant requests that the information be kept confidential for the life of the Mission Rock Energy Center project. The trade secret information has value through the operation of the project; therefore, it is appropriate to grant confidentiality for the life of the Mission Rock Energy Center project.

For the reasons stated above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential for the life of the Mission Rock Energy Center project.

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,

A handwritten signature in black ink, appearing to read 'R. P. Oglesby', with a long horizontal line extending to the right.

Robert P. Oglesby
Executive Director

cc: Docket Unit, California Energy Commission
Mike Monasmith, California Energy Commission
Galen Lamei, California Energy Commission