

DOCKETED

| | |
|-------------------------|---|
| Docket Number: | 08-AFC-09C |
| Project Title: | Palmdale Energy Project (Formerly Palmdale Hybrid Power Plant) - Compliance |
| TN #: | 211505 |
| Document Title: | Response to Application for Confidentiality - CAISO Cluster 8 Phase I Interconnection Study |
| Description: | N/A |
| Filer: | Sabrina Savala |
| Organization: | California Energy Commission |
| Submitter Role: | Commission Staff |
| Submission Date: | 5/17/2016 10:23:30 AM |
| Docketed Date: | 5/17/2016 |

CALIFORNIA ENERGY COMMISSION1518 NINTH STREET
SACRAMENTO, CA 95814-5512

May 17, 2016

Scott A. Galati
DayZen, LLC
2501 Capitol Avenue, Suite 201
Sacramento, CA 95816

**RE: Application for Confidential Designation for CAISO Cluster 8
Phase I Interconnection Study
Palmdale Energy Project
Docket No. 08-AFC-9C**

Dear Mr. Galati:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of Palmdale Energy, LLC (Applicant). The application seeks confidential designation for *Palmdale Energy Project CAISO Cluster 8 Phase I Interconnection Study* (TN 210359) (Confidential Record).

The application states that confidentiality is sought for a special compilation of market sensitive information. Furthermore, Applicant states that the California Independent System Operator (CAISO) requires Applicant to treat the compiled information as confidential, pursuant to section 15.1 of Appendix DD of the CAISO tariff. Applicant notes that no feasible method of aggregating or masking information in the Confidential Record could be identified and that the Confidential Record has 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, 207-208, 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 Confidential Record is a special compilation developed for Applicant; 2) disclosure of the Confidential Record could place Applicant at a competitive disadvantage if the information were made public and disclosed to its competitors; 3) the Confidential Record contains market sensitive information that allows Applicant, as an interconnection customer, to remain competitive in the market; and 4) Applicant only discloses the content of the Confidential Record on a need-to-know basis to its employees, attorneys, and consultants working on the Palmdale Energy Project, Applicant marks the information as "Confidential;" and Applicant segregates and restricts access to the Confidential Record.

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 Petition for Amendment to the Commission Final Decision on the Palmdale Hybrid Power Project.

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 until CAISO provides an opinion that the Confidential Record is no longer confidential under the terms of its tariff. Senior Counsel for CAISO clarified that the Confidential Record maintains its value as trade secret information until construction of Palmdale Hybrid Power Project is complete. If construction of the project is not commenced or completed, Senior Counsel for CAISO affirmed that the Confidential Record maintains its trade secret value for approximately five years.

Scott A. Galati
May 17, 2016
Page 3

Therefore, it is appropriate to grant confidentiality until construction on Palmdale Hybrid Power Project is complete. Alternatively, if construction of the project is not commenced or completed, it is appropriate to grant confidentiality for five years from the issuance of this letter. Public disclosure of the Confidential Record by CAISO or Applicant will terminate the California Energy Commission's designation of confidentiality.

For the reasons stated above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential until construction on Palmdale Hybrid Power Project is complete or, alternatively, for five years from the issuance of this letter if construction on the project is never commenced or completed.

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
Eric Veerkamp, California Energy Commission Compliance Project Manager
John Spomer, Senior Counsel, California Independent Systems Operator