

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

December 9, 2009

DOCKET**08-AFC-11**

DATE DEC 09 2009

RECD DEC 09 2009

Marc T. Campopiano
Latham & Watkins, LLP
650 Towne Center Drive, 20th Floor
Costa Mesa, CA 92626-1925

RE: **Application for Confidentiality, Transmission Cluster Study
CPV Vaca Station Power Plant Project
Docket No. 08-AFC-11**

Dear Mr. Campopiano:

On November 9, 2009, CPV Vacaville, LLC ("Applicant") filed an application for confidentiality on behalf of the CPV Vaca Station Power Plant Project (Docket No. 08-AFC-11). The application seeks confidentiality for the "Transition Cluster Group 1 Phase 1 Interconnection Study Report, Competitive Power Ventures, CPV California IX Project, Final Report," 51 pages, and related Appendices A through J, dated July 28, 2009 (the "Submitted Record.")

Applicant states that the Submitted Record should be held confidential and exempt from disclosure because:

(1) its previous designation of confidentiality by the Cal-ISO; (2) California Government Code § 6254(k) (trade secrets); or (3) Government Code § 6254.15 (proprietary information.)

To determine whether the information is a trade secret, the Applicant attested to the following:

...The specific nature of the advantage is the Applicant's ability to rely on the Submitted Record to characterize the costs associated with transmission upgrades for the project in a manner that a competitor without the information could not, giving the Applicant a competitive advantage. This information is not readily available on the marketplace.

...The advantage described above would be lost if the information is no longer confidential because the Applicant's competitors could use the information, eliminating the Applicant's competitive advantage.

...The value of the information to the Applicant is based on (1) significant investment in time, money and resources that went into developing the Submitted Record, and (2) the Applicant's use of the information to its advantage over its competitors.

...This information is not readily available on the marketplace and can only be obtained with a significant investment of time and money. Thus, others could not easily acquire or duplicate this information.

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, § 1040.) The 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.)

Applicant has made a reasonable argument that the Submitted Record contains trade secrets, as it contains information used in business that gives Applicant an opportunity to obtain an advantage over competitors who do not know the information. As such, I will grant *temporary confidentiality* of the Submitted Record. However, certain parts of the record may need to be disclosed by Energy Commission staff during publication of the Final Staff Assessment, or during the evidentiary hearings for the case, and therefore, confidentiality is granted only until the publication of the Final Staff Assessment.

Persons may petition to inspect or copy the 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. The procedures and criteria for appealing any part of this decision are set forth in the California Code of Regulations, title 20, section 2505. Be advised that an appeal of this decision must be filed within fourteen days from my decision. During those fourteen days, the Submitted Record will not be publicly disclosed. If you have any questions concerning this matter, please contact Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,

/S/

Melissa Jones
Executive Director

cc: Docket Unit
Rod Jones, Energy Commission Project Manager