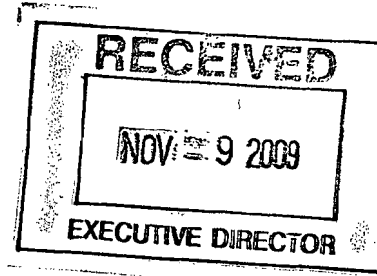


COMPLETED

LATHAM & WATKINS LLP



650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +1.714.540.1235 Fax: +1.714.755.8290
www.lw.com

FIRM / AFFILIATE OFFICES

- Abu Dhabi Munich
- Barcelona New Jersey
- Brussels New York
- Chicago Orange County
- Doha Paris
- Dubai Rome
- Frankfurt San Diego
- Hamburg San Francisco
- Hong Kong Shanghai
- London Silicon Valley
- Los Angeles Singapore
- Madrid Tokyo
- Milan Washington, D.C.
- Moscow

November 4, 2009

VIA FEDEX

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-11
1516 Ninth Street, MS-4
Sacramento, California 95814-5512

File No. 030137-0024

DOCKET	
08-AFC-11	
DATE	NOV 04 2009
RECD	NOV 09 2009

Re: CPV Vaca Station Power Plant Project: Docket No. 08-AFC-11
Confidential Submittal

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, Sections 1209, 1209.5, 1210, and 2505, enclosed herewith for filing please find a letter from Marc Campopiano to Melissa Jones regarding an application for confidential designation of a confidential California Independent System Operator ("Cal-ISO") report entitled, "Transition Cluster Group 1 Phase 1 Interconnection Study Report, Competitive Power Ventures, CPV California IX Project." Per CEC protocols, five (5) copies of the application letter along with the confidential submittal are also enclosed.

Please note that the enclosed application letter (without the Cal-ISO confidential report) was filed today via electronic mail to your attention and to all parties on the attached electronic proof of service list.

Very truly yours,

Paul E. Kihm
Senior Paralegal

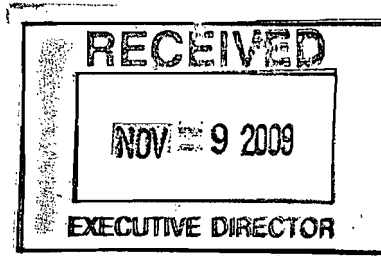
Enclosures

- cc: 08-AFC-11 Proof of Service List (w/encl. application letter only), via e-mail and U.S. Mail)
- Michael J. Carroll, Esq. (w/encls.)
- Marc T. Campopiano, Esq. (w/encls.)

Marc T. Campopiano
(714) 755-2204
Marc.Campopiano@lw.com

650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +1.714.540.1235 Fax: +1.714.755.8290
www.lw.com

LATHAM & WATKINS LLP



FIRM / AFFILIATE OFFICES

Abu Dhabi	Munich
Barcelona	New Jersey
Brussels	New York
Chicago	Orange County
Doha	Paris
Dubai	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
London	Silicon Valley
Los Angeles	Singapore
Madrid	Tokyo
Milan	Washington, D.C.
Moscow	

File No. 030137-0024

November 4, 2009

VIA FEDERAL EXPRESS

Ms. Melissa Jones
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: **Confidential Submittal** – CPV Vaca Station (08-AFC-11)
Application for Confidential Designation

Dear Ms. Jones:

On behalf of CPV Vacaville, LLC (“Applicant”) for the CPV Vaca Station project (08-AFC-11), I am submitting an application for confidential designation of the California Independent System Operator (Cal-ISO) “Transition Cluster Group I Phase I 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”).

In this submittal, we present three independent bases for finding the Submitted Record confidential and exempt from disclosure under the California Public Records Act related to: (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).

1. The Cal-ISO Previously Has Determined the Submitted Record is Confidential

The Cal-ISO has determined the Submitted Record is a confidential document. The Energy Commission’s regulations call for the Energy Commission to consider another agency’s determination of confidentiality. (Title 14, California Code of Regulations, § 2505(a)(1)(H).) The Cal-ISO is the functional equivalent of a state agency and the Energy Commission should give deference to its determination of confidentiality. As such, the Submitted Record should be deemed confidential.

2. ***The Submitted Record is Confidential Under Gov. Code § 6254(k) as a Trade Secret***

The Applicant requests that the Submitted Record be designated confidential pursuant to California Government Code § 6254(k), which exempts trade secrets from disclosure under the California Public Records Act.

Under controlling law expressed in *Uribe v. Howie*, 19 Cal. App. 3d 194, 206-207 (1971):

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. (Emphasis added.)

To determine whether certain information is a trade secret, one must evaluate whether the matter sought to be protected is information (1) which is valuable because it is unknown to others, and (2) which the owner has attempted to keep secret. (*Whyte v. Schlage Lock Co.* (2002) 101 Cal. App. 4th 1443, 1454.) The Submitted Record represents a trade secret as a compilation of information that is valuable to the Applicant for strategic commercial reasons. The Submitted Record provides the Applicant with a competitive business advantage over potential competitors who do not have access to such a compilation of information. For that reason, the Applicant has made efforts to keep the information secret.

When requesting a trade secret to be deemed confidential, the Applicant must provide: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to the applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others. (*See* Title 20, California Code of Regulations, § 2505(a)(1)(D).) Accordingly, the Applicant attests to the following:

- ***“The specific nature of the advantage”*** – 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.
- ***“How the advantage would be lost”*** – 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”*** – The value of the information to the Applicant is based on (1) the 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.

- ***“The ease or difficulty with which the information could be legitimately acquired or duplicated by others”*** – 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.

3. *Government Code § 6254.15 – Proprietary Information*

Gov. Code § 6254.15 exempts the following types of information from disclosure under the California Public Records Act:

[C]orporate 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.

As stated above, the Submitted Record is a trade secret under California law as a compilation of information that the Applicant has carefully kept secret to preserve its value. Thus, it falls squarely under Gov. Code § 6254.15 as corporate proprietary information. The Submitted Record is also information related to the siting of a facility within the state. The Applicant has submitted this information to the Energy Commission for the purpose of obtaining a license to build a power plant facility within California. Thus, the Submitted Record falls squarely under Gov. Code § 6254.15 and should be exempted from disclosure under the California Public Records Act.

4. *Summary of Basis For Confidentiality Request*

According to the Energy Commission’s regulations, an application for confidential designation “shall be granted if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential.” (Title 14, California Code of Regulations, § 2505(a)(3)(A) (emphasis added).) This letter establishes a reasonable claim for confidentiality because the Cal-ISO has previously determined that the Submitted Record is confidential and the Submitted Record falls squarely under two independent exemptions to the California Public Records Act – Gov. Code § 6254(k) and Gov. Code § 6254.15. The Applicant requests that its application for confidentiality be granted in accordance with the Energy Commission’s regulations.

Lastly, the Applicant requests that the entirety of the Submitted Record be kept confidential indefinitely. The Applicant requests that the Submitted Record not be disclosed even if aggregated with other information or redacted to conceal certain information. The Applicant has not disclosed any of the subject confidential information to anyone other than its employees, attorneys, consultants, others working as part of the project application before the Energy Commission, or others with a specific need for the information. This information has not been disclosed by the Applicant except on a “need-to-know” basis.

LATHAM & WATKINS ^{LLP}

I have been authorized to make this application and certification on behalf of the Applicant. With my signature to this letter, 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.

Very truly yours,



Marc T. Campopiano
of LATHAM & WATKINS LLP

cc: Andrew Welch, Competitive Power Ventures