

## CALIFORNIA ENERGY COMMISSION

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SACRAMENTO, CA 95814-5512

May 9, 2008

Mr. Michael J. Carroll  
Latham & Watkins LLP  
650 Town Center Drive, 20<sup>th</sup> Floor  
Costa Mesa, CA 92626-1925

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| <b>DOCKET</b><br>07-AFC-3 |
| DATE MAY 09 2008          |
| RECD. MAY 09 2008         |

RE: Application for Confidentiality: Water Negotiation Strategy  
CPV Sentinel Energy Project  
Docket No. 07-AFC-3

Dear Mr. Carroll:

On April 11, 2008, the CPV Sentinel Energy Project (Sentinel) filed an application for confidential designation in the above-referenced Application for Certification (AFC). Sentinel seeks a designation of confidentiality for its document entitled "Confidential Update to California Energy Commission Staff Regarding Negotiations for the Importation of Water." The application states, in part:

The information submitted is a special compilation developed by CPV Sentinel and provides it with an advantage over potential competitors who have not developed such a compilation of information. Furthermore, disclosure of potential sources of water may hinder current negotiations. . . . CPV Sentinel requests that the entirety of the enclosed information be kept confidential indefinitely in order to ensure protection of the confidential trade secrets and to ensure that ongoing negotiations are not hampered.

The California Public Records Act allows for non-disclosure of trade secrets. (Gov. Code, § 6254(k), Evid. Code, § 1060.) 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. Howie* (1971) 19 Cal.App.3d 194, 207-208, 96 Cal.Rptr. 493, 500-501, from the Restatement of Torts, vol. 4, sec. 757, comment b, p. 5.)

Sentinel makes a reasonable argument under the California Energy Commission's (Energy Commission) regulations for classifying the identity of its negotiation strategy as a trade secret, providing the applicant with a competitive advantage over rival developers, in accordance with the above standards. (Cal. Code Regs., tit. 20, § 2505.) Therefore, it is in the public interest that non-disclosure of this strategy be given confidentiality, so as not to interfere with negotiations.

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I therefore grant temporary confidentiality to Sentinel's negotiation strategy until issuance of the Final Staff Assessment. Accordingly, it is in your best interest that negotiations be completed by this time.

**Any subsequent submittals related to this negotiation strategy can be deemed confidential for the temporary term specified in this letter without the need for a new application under California Code of Regulations, title 20, sections 2505 subdivisions (a)(1)(G) and 2505(a)(4), if you file a certification under penalty of perjury that the new information is substantially similar to that which is granted confidential status by this determination.**

Persons may petition to inspect and/or copy those 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.

Finally, Sentinel may wish to appeal this determination. Be advised that an appeal of this determination must be filed within fourteen days from the date of this letter. The procedures and criteria for appealing any part of this determination are set forth in the California Code of Regulations, title 20, section 2505. If you have any questions concerning this matter, please contact Fernando De Leon, Senior Staff Counsel, at (916) 654-4873.

Sincerely,



MELISSA JONES  
Executive Director

cc: Project Manager, 07-AFC-3  
Docket Unit