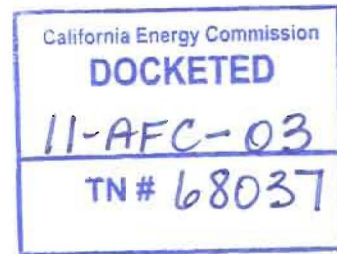




## Quail Brush Genco, LLC



A Project Company of Cogentrix Energy, LLC

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October 23, 2012

Mr. Robert Oglesby  
Executive Director  
California Energy Commission  
1516 Ninth Street, MS-2000  
Sacramento, CA 95814

**Re: Quail Brush Generation Project (11-AFC-03), Request for Confidential Treatment of IMPLAN Modeling Data**

On behalf of Quail Brush Genco, LLC (the "Applicant") and in support of trade secret and proprietary business information confidentiality, pursuant to 20 California Code of Regulations (CCR) §2505, please find enclosed 1 hard copy and 1 CD of IMPLAN Modeling Data submitted in support of the associated Quail Brush Generation Project AFC (Docket 11-AFC-3). The Project is a 100-megawatt peaker power plant to be located in Little Sycamore Canyon in the City of San Diego, San Diego County, California.

The Applicant requests that the proprietary data and information be designated confidential pursuant to 20 CCR § 2505. The information required by this regulatory section is outlined below.

- 20 CCR §2505 (1)(B): *Specifically indicate those parts of the record that should be kept confidential.*

The Applicant requests confidential designation for the IMPLAN Modeling Data, a compilation of information relating to the Applicant's costs of construction and operation of the Project, including estimates of costs associated with: major equipment; site preparation / interconnection; taxes, fees, and finance; soft construction costs; labor; maintenance; fuel; and other operating costs (collectively, the "Submitted Information"). The Submitted Information is proprietary, market-sensitive information and includes some trade secret information pursuant to California law, as is further discussed below. The Applicant requests the Commission designate the Submitted Information as confidential in its entirety. This request applies to both digital and hard copy versions of the Submitted Information.

- 20 CCR §2505 (1)(C): *State the length of time the record should be kept confidential, and justification for the length of time.*

Due to the proprietary nature of the Submitted Information, including the trade secret aspect of some of the Submitted Information (as discussed below), the Applicant requests that the Submitted Information be kept confidential indefinitely. The Applicant anticipates that this information will remain of a confidential, proprietary and/or trade secret nature through at least the construction, operation, and decommissioning periods of the proposed Project.

- *20 CCR §2505 (1)(D): Cite and discuss the provisions of the Public Records Act or other law that allow the Commission to keep the record confidential.*

## **Trade Secret**

The Commission's regulations provide for confidential treatment of trade secrets. (See 20 CCR § 2505(a)(1)(D).) Certain aspects of the Submitted Information (namely, the estimated operational labor costs and maintenance costs) contain trade secrets under California law.

The California Public Records Act exempts "trade secrets" from public disclosure. (Cal Govt. Code § 6254.7(d).) This exemption extends to, but is not limited to, "any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it." (*Id.*)

A trade secret is further defined by the California Civil Code to mean "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy." (Cal. Civ. Code § 3426.1(d).)

The operational labor and maintenance cost estimate portions of the Submitted Information contain trade secrets as defined by California law. These cost estimates represent a compilation of information which is not patented, and which is known to only a certain individuals associated with the Applicant, its consultants, its counsel, and its investors. These individuals are currently using and will continue to use the operational labor and maintenance cost information to finance and operate the proposed Project and provide the service of generating electricity. The operational labor and maintenance cost estimates have been created and assembled based on years of experience by the Applicant's corporate parents in designing, developing, constructing, and operating power plants. The Applicant derives independent economic value from this information not being generally known because this information informs the Applicant's business strategy and allows it to effectively compete in the energy market in California.

The Applicant has undertaken reasonable efforts to maintain the secrecy of all of the Submitted Information, including the operational labor and maintenance cost estimates. The Submitted Information has never been released publicly and has only been made available to: (1) employees of the Applicant or its corporate parent, who have been instructed not to disclose the

information, (2) the Applicant's consultants and counsel who have signed confidentiality agreements with the Applicant and/or have ethical obligations to maintain the confidentiality of all information, and (3) investors or potential investors of the Project or the Applicant and their agents, all of whom have signed confidentiality agreements with the Applicant.

### **Loss of Competitive Advantage**

The Commission's regulations provide for confidential treatment of information the disclosure of which "would . . . cause a loss of a competitive advantage" for the submitter. (See 20 CCR § 2505(a)(1)(D).)

Information associated with the Applicant's operational construction and operating costs provides a competitive advantage to the Applicant. The Submitted Information informs the business strategies of the Applicant and its corporate parent with regard to the proposed Project, as well as with regard to other power plant projects the corporate parent may develop in the future. Disclosure of the information would place the Applicant in a weakened negotiating position with third-party market participants. In addition, disclosure of this information would allow the Applicant's competitors and others to obtain proprietary information for free instead of paying the full market value of such information. Such entities could use the Applicant's proprietary information to produce data and analysis for their own business use, without the expenditure of time and resources that the Applicant has invested to develop the calculations and cost estimates.

### **Public Interest**

Government Code section 6255 permits a public agency to withhold a record where "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." The Commission should also afford the Submitted Information confidential treatment pursuant to section 6255 because the public interest is best served in the instant case by keeping information relating to construction and operation costs confidential due to the competitive nature of the California power market. As noted above, if the Submitted Information is disclosed to the general public, other market participants would have an unfair advantage in the market which does not serve the public interest. In addition, if the Commission does not preserve the confidentiality of the Submitted Information, the disclosure may discourage market participants and other stakeholders from participating in the public process.

- *20 CCR §2505 (1)(E): State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required. If the information cannot be disclosed even if aggregated or masked, the application shall justify why it cannot.*

The Applicant does not believe there is a feasible way to aggregate or mask the information that would not either render the information meaningless or disclose proprietary information. Moreover, the Commission's Staff expressly requested that the Applicant provide

the Submitted Information in an un-aggregated and un-masked form, so that it may use the data for its own calculations and analysis.

- *20 CCR §2505 (1)(F): State how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

As discussed above, the Applicant has not disclosed any of the subject confidential information to anyone other than its employees, its attorneys and consultants working on the AFC for the Project, and investors or potential investors in the Project or the Applicant. All individuals with whom the information has been shared are bound by contract and/or ethical obligation to maintain its confidentiality.

- *20 CCR §2505 (1)(G): Include a statement executed by the person primarily responsible for preparing the application that information contained in this application is true, complete, and correct to the best of their knowledge. State whether the applicant is a company, firm, partnership, trust, corporation, or other business entity, or an organization or association.*

I certify under penalty of perjury that the information contained in this request for confidential designation is true, correct, and complete to the best of my knowledge. As Vice President of Development for the Applicant, I am authorized to make this certification and submit this request on behalf of the Applicant.

Sincerely,



C. Richard Neff  
Vice President, Environmental Affairs

Enclosure: (IMPLAN Modeling Data)

cc: Docket (11-AFC-3)