

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

June 17, 2009

<b>DOCKET</b>
<b>08-AFC-1</b>

DATE June 17 2009RECD. June 17 2009

Nicolaas Pullin  
Downey Brand  
621 Capitol Mall, 18<sup>th</sup> Floor  
Sacramento, CA 95814

RE: **Electrical One-Line Diagrams, Application for Confidentiality,  
Avenal Power Project,  
Docket No. 08-AFC-1**

Dear Mr. Pullin:

On May 8, 2009, Avenal Power Center, LLC, (Applicant) filed an application for confidentiality on behalf of the Avenal Power Project (Docket No. 08-AFC-1). The application sought confidentiality for the *proposed* electrical one-line diagrams submitted in connection to the Avenal Application for Certification with the California Energy Commission (Commission). On May 18, 2009, Applicant filed an application seeking confidentiality for the *revised* electrical one-line diagrams. During a June 3, 2009, telephone conversation, you indicated that the May 18 application was intended to supersede the May 8 application. As such, the information and arguments presented in your May 8 application will be used to evaluate your request for confidentiality for the *revised* one-line diagrams; however, this determination will only apply to the *revised* one-line diagrams, and the *proposed* one-line diagrams will not herein be considered.

Applicant requests that the revised one-line diagrams be designated as confidential, as they consist of the revised post-project PG&E 230kV Gates Substation and the Avenal Energy Project switchyard/interconnection with the Gates Substation, including breaker ratings. Applicant claims that the one-line diagrams are Critical Energy Infrastructure Information (CEII), and that the California Public Records Act (PRA), as well as the Federal Energy Regulatory Commission (FERC) regulations, allow the Commission to designate CEII as confidential.

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."

Applicant relies upon Government Code section 6254(ab) for the contention that CEII is exempt from public disclosure. That section exempts from disclosure:

Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Office of Homeland Security for use by that office. (emphasis added)

Applicant does not claim, nor submit any evidence to support a claim, that Applicant has submitted the one line diagrams to the California Office of Homeland Security. As such, the application does not make a reasonable claim that Government Code section 6254(ab) applies to the information for which Applicant seeks confidentiality.

Applicant next asserts that the Federal FERC regulations allow the Commission to maintain the confidentiality of the electrical one-line diagrams. Applicant cites to 18 C.F.R. § 388.113, which defines critical energy infrastructure information as:

. . .specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

- (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
- (ii) Could be useful to a person in planning an attack on critical infrastructure;
- (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, and
- (iv) Does not simply give the general location of the critical infrastructure.

Applicant fails to note, however, that FERC regulations also state that a person claiming that information warrants special treatment as CEII or privileged must file a written statement to FERC requesting CEII or privileged treatment for some or all of the information in a document, and the justification for special treatment of the information. 18 C.F.R. § 388.112(b). Applicant does not claim, nor submit any evidence to support a claim, that Applicant has submitted the one line diagrams to FERC and requested that the information be treated as CEII. As such, Applicant has not made a reasonable claim that the exemption contained in 18 C.F.R. § 388.113 applies to the information for which Applicant seeks confidentiality.

Finally, Applicant has not stated whether the information contained in the one-line diagrams is not already public information, as required by California Code of Regulations, title 20, section 2505(a)(1)(E).

Due to the reasons stated above, the application does not provide sufficient explanation upon which the Commission may grant the request, and the application for confidential designation of Avenal's one-line diagrams is denied.

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

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days, the information 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,

A handwritten signature in black ink, appearing to read "Melissa Jones". The signature is fluid and cursive, with a large loop at the end.

Melissa Jones  
Executive Director

cc: Docket Unit  
Joseph Douglas, Project Manager