

COMPLETED

DOCKET 08-AFC-1	
DATE	MAY 08 2009
RECD.	MAY 08 2009

May 8, 2009



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

Re: Avenal Power Plant Project, 08-AFC-1

Dear Ms. Jones:

Pursuant to Title 20 California Code of Regulations (CCR) Section 2501 *et seq.*, Avenal Power Center, LLC hereby submits this Application for Confidential Designation of Electrical One-Line Diagrams for the Avenal Power Project.

We are filing five copies of this request and the information it concerns with the Commission's Docket Office. Please feel free to contact me at (916) 444-1000 should you have any questions or require additional information. Thank you for your consideration of our request.

Very truly yours,

DOWNEY BRAND LLP

A handwritten signature in black ink, appearing to read "N. Pullin".

Nicolaas W. Pullin

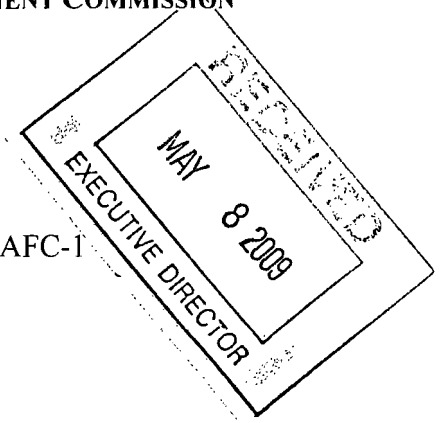
:ln

Attachment

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR
THE AVENAL ENERGY PROJECT

DOCKET NO. 08-AFC-1



AVENAL POWER CENTER, LLC'S APPLICATION FOR CONFIDENTIAL
DESIGNATION OF ELECTRICAL ONE-LINE DIAGRAMS

DOWNEY BRAND LLP
Jane Luckhardt
Nicolaas Pullin
621 Capitol Mall, 18th Floor
Sacramento, CA 95814-4686
Telephone: (916) 444-1000
Facsimile: (916) 444-2100

Attorneys for Applicant
Avenal Power Center, LLC

May 8, 2009

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:) Docket No.: 08-AFC-1
)
Application for Certification for the)
Avenal Energy Project)
_____)

AVENAL POWER CENTER, LLC'S APPLICATION FOR CONFIDENTIAL
DESIGNATION OF ELECTRICAL ONE-LINE DIAGRAMS

I. Introduction

Pursuant to Title 20 of the California Code of Regulations (“Commission Siting Regulations”) Section 2505, Avenal Power Center, LLC (“Avenal Power”), in connection with its Application for Certification (“AFC”) for the Avenal Energy project, hereby submits this Application for Confidential Designation of the attached proposed electrical one-line diagrams. These diagrams consist of the proposed post-project PG&E 230 kV Gates Substation and the Avenal Energy project switchyard/interconnection with the Gates Substation. The attached proposed electrical one-line diagrams were specifically requested by California Energy Commission (“Commission”) staff (“Staff”) in order to assist with its evaluation of the Avenal Energy project (see Staff Data Request #54-55). Failure to designate the proposed one-line diagrams as confidential would result in the public exposure of sensitive critical energy infrastructure information, thereby increasing the vulnerability of the critical infrastructure.

II. One-Line Diagrams are Considered Critical Energy Infrastructure Information and Should Remain Confidential

The Commission’s Siting Regulations require that an application for confidential designation discuss provisions of the Public Records Act (PRA) or other law that allow the Commission to keep a record confidential. (20 C.C.R. § 2505(A)(1)(D).) Both the PRA and

Federal Energy Regulatory Commission (FERC) regulations allow the Commission to maintain the confidentiality of the attached proposed electrical one-line diagrams.

The PRA recognizes the sensitive nature of “critical infrastructure information” by exempting it from public disclosure. (Cal. Gov’t. Code § 6254(ab).) The PRA employs a definition from 6 U.S.C. § 131(3) that defines “critical infrastructure information” as “information not customarily in the public domain and related to the security of critical infrastructure or protected systems” which then refers to: actual, potential, or threatened interference or attack on infrastructure that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety; the ability of any critical infrastructure or protected system to resist such interference; and any planned or past operational problem or solution regarding critical infrastructure. Information relating to the location and physical layout of the Gates Substation and the Avenal Energy project’s transmission components is not typically public knowledge. The highly detailed and sensitive information contained within the attached proposed one-line diagrams could potentially aid in an illegal attack on the depicted infrastructure that would clearly harm interstate commerce and threaten public health and safety.

The PRA also requires that the information be “voluntarily submitted to the California Emergency Management Agency for use by that office.” (Cal. Gov’t. Code § 6254(ab).) Although the PRA’s California Emergency Management Agency submission requirement does not specifically apply to the proposed one-line diagrams at issue here, Avenal Power believes that the PRA’s specific disclosure exemption for critical infrastructure information necessitates the Commission’s confidential designation of the attached proposed one-line diagrams.

Perhaps more pertinent to the unique sensitivity of the energy generation and transmission facilities at issue here are FERC’s public disclosure regulations. FERC regulations specifically restrict the public’s access to “critical energy infrastructure information.” (18 C.F.R. § 388.113.) Section 388.113(c)(2)(1) defines “critical energy infrastructure information” as “specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure” that relates to the production or transmission of energy and could be useful to someone planning an attack on critical infrastructure. “Critical infrastructure” is then defined to mean “existing and proposed systems and assets . . . the incapacity or destruction of

which would negatively affect security, economic security, public health or safety, or any combination of those matters.” (18 C.F.R. § 388.113(c)(2).)

Avenal Power believes the Avenal Energy project and its associated transmission facilities, as well as the Gates Substation, would be considered critical infrastructure because, as mentioned above, the incapacity of any of these facilities would certainly negatively affect security and public health and safety, particularly during the peak summer months. Detailed knowledge of the physical layout of the Project’s transmission facilities and the Gates Substation would, without a doubt, aid someone in committing an attack on the Avenal Energy project or its point of grid interconnection at the Gates Substation. Therefore, information concerning “specific engineering” or “detailed design information” about the Project’s transmission facilities or the Gates Substation, such as the information within the attached proposed one-line diagrams, would constitute critical energy infrastructure information.

In addition, FERC’s own guidelines specifically confirm that one-line diagrams are critical energy infrastructure information. FERC’s “Guidelines for Filing Critical Energy Infrastructure Information”¹ (“FERC Guidelines”) contain a subsection entitled “Guidelines for filing FERC Form 715 Transmission Planning and Evaluation Report.” Form 715 is specifically for facilities that are rated at or above 100 kV, as the Gates Substation and Avenal Energy project’s switchyard and tie line are.² The section of the Form 715 Guidelines related to critical energy infrastructure information states that Part 3 of Form 715 “provides detailed one-line diagrams and geographic location and identification of all system components These three parts [referring to the three parts of Form 715, including Part 3, that are not public] contain CEII [critical energy infrastructure information] and should be filed as such.” (FERC Guidelines at 6.)

In addition, FERC Order No. 630³ (dated February 21, 2003) contains responses to comments on the Final Rule establishing a procedure for gaining access to CEII and addresses Form 715 procedures. It states that the “Commission [FERC] considers Part 3 transmission system maps and diagrams used by the utility for transmission planning to be CEII.” (FERC Order No. 630 at 28.) “Part 3” refers to Part 3 of Form 715 discussed above, which considers one-line diagrams to be critical energy infrastructure information.

¹ Available at <http://www.ferc.gov/help/filing-guide/file-ceii/ceii-guidelines/guidelines.pdf>.

² Preliminary Staff Assessment at 5.5-1.

³ Available at <http://www.ferc.gov/legal/maj-ord-reg/land-docs/ceii-rule.asp>.

FERC regulations, orders and guidelines clearly establish one-line diagrams as critical energy infrastructure information. As a result, these diagrams are protected from general public disclosure. Avenal Power requests that the Energy Commission recognize the sensitive nature of the critical energy infrastructure information contained in the attached proposed one-line diagrams and designate them as confidential.

III. The Proposed One-Line Diagrams Cannot be Disclosed Even if Aggregated or Masked

The attached diagrams cannot be disclosed even if aggregated with other information or redacted. Avenal Power is providing this information at this time and in this format at the request of Staff and to expedite the siting process. Unfortunately, the information in the attached proposed one-line diagrams is explicit and cannot be aggregated or masked without losing its value in assisting Staff in its evaluation.

IV. The Proposed One-Line Diagrams Have Been Kept Confidential

The information contained in the proposed electrical one-line diagrams is known only to the employees of PG&E, the California Independent System Operator and Avenal Power, specific consultants hired by Avenal Power to assist in the siting of the Avenal Energy project, and Avenal Power's attorneys. To our knowledge, this information has not been publicly disclosed and has been carefully guarded.

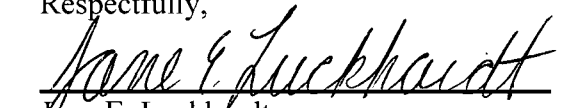
V. The Information Should Be Indefinitely Kept Confidential

Avenal Power requests that the attached proposed one-line diagrams be kept confidential indefinitely or at least for the operational duration of the Project and the Gates Substation. Typically, once constructed, it is unlikely that a project's transmission facilities and substation would change, at least for the foreseeable future. It is not expected that the existing underlying physical layouts depicted in the one-line diagrams will change, therefore their sensitive nature and status as critical energy infrastructure information are also not expected to change.

VI. Conclusion

Because the public disclosure of the enclosed critical energy infrastructure information could potentially risk the security of the Avenal Energy project and the Gates Substation thereby negatively affecting security, economic security and public health and safety, Avenal Power requests that the Commission designate the attached proposed electrical one-line diagrams as confidential.

Respectfully,

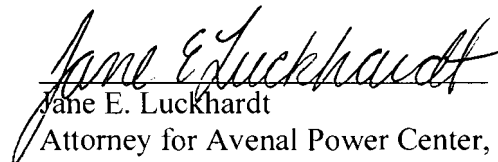


Jane E. Luckhardt
Downey Brand LLP
Attorney for Avenal Power Center, LLC

DECLARATION OF JANE E. LUCKHARDT

I, Jane E. Luckhardt, attorney for Avenal Power Center, LLC certify this Application for Confidential Designation of Electrical One-Line Diagrams depicting the proposed post-project PG&E 230 kV Gates Substation and the Avenal Energy project switchyard/interconnection with the Gates Substation on behalf of Avenal Power Center, LLC, a limited liability company. I certify under the penalty of perjury that the information contained in this Application for Confidential Designation is true, correct, and complete to the best of my knowledge. I am authorized to make this application and certification on behalf of Avenal Power Center, LLC.

Signed:


Jane E. Luckhardt
Attorney for Avenal Power Center, LLC

Dated: May 8, 2009