

CONFIDENTIAL

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LATHAM & WATKINS LLP

DOCKET
08-AFC-9
DATE APR 19 2010
RECD APR 21 2010

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April 19, 2010

COMPLETED

VIA FEDEX

ORIGINAL

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

Re: **Confidential Submittal - Palmdale Hybrid Power Plant Project (08-AFC-9)  
 Executed Confidential Term Sheet for Proposed Contingent Forward  
 Purchase and Sale of San Joaquin Emission Reduction Credits**

Dear Ms. Jones:

On behalf of the City of Palmdale ("Applicant") for the Palmdale Hybrid Power Project (08-AFC-9) ("Project"), I am submitting an application for confidential designation of the executed "Confidential Term Sheet for Proposed Contingent Forward Purchase and Sale of San Joaquin Emission Reduction Credits," by and between the City of Palmdale (buyer) and Calpine Energy Services, L.P. (seller), dated March 8, 2010 (the "Submitted Record"). The Applicant requests the Energy Commission designate the Submitted Record as confidential pursuant to Title 20, California Code of Regulations, § 2505. We present two independent bases for finding the Submitted Record confidential and exempt from disclosure under the California Public Records Act: (1) California Government Code § 6254(k) (trade secrets); or (2) Government Code § 6254.15 (proprietary information).

**1. 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.)

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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.*, 101 Cal. App. 4th 1443, 1454 (2002).)

The Submitted Record represents a confidential business transaction between two private parties to set the terms to buy and sell emission offset credits. The Applicant has spent time and resources engaging in the executed Submitted Record and Applicant's investment would be jeopardized if its competitors became aware of the terms. The Submitted Record was also intended to be confidential by the buyer and seller involved in the transaction. (*See Uribe, supra*, 19 Cal. App. 3d at 206-207; *Whyte, supra*, 101 Cal. App. 4th at 1454.) Public disclosure could chill similar future contractual arrangements, making emission reduction credits even less available on the open market.

Under Energy Commission regulations, when requesting a trade secret be deemed confidential, an application 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 Submitted Record represents a confidential business transaction between two private parties to set the terms to buy and sell emission offset credits. The Applicant has spent time and resources engaging in the executed Submitted Record and Applicant's business advantage would be jeopardized if its competitors became aware of the terms because the Applicant's competitors may not have independently compiled the information in the Submitted Record. The Submitted Record was also intended to be confidential by the buyer and seller involved in the transaction.
- ***"How the advantage would be lost"*** – The Applicant has spent time and resources engaging in the executed Submitted Record and Applicant's business advantage would be jeopardized if its competitors became aware of the terms because the Applicant's competitors may not have independently compiled the information in the Submitted Record.
- ***"The value of the information to the applicant"*** – Applicant intends to use the Submitted Record to obtain emission offset credits to mitigate potential air quality impacts associated with the Project.
- ***"The ease or difficulty with which the information could be legitimately acquired or duplicated by others"*** – The Submitted Record 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.

For the reasons provided above, the Submitted Record is a trade secret under California law and thus falls squarely under the exemption in Gov. Code § 6254(k).

**2. *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.

The Submitted Record contains corporate proprietary information because it is maintained as confidential by the Applicant for strategic business purposes. The Submitted Record represents a confidential business transaction between two private parties to set the terms to buy and sell emission offset credits. In addition, the Submitted Record is information related to the siting of a facility within the state filed with the Energy Commission. As a result, it falls squarely under the exemption in Gov. Code § 6254.15.

**3. *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).) This letter establishes a reasonable claim for confidentiality because 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 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.

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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.

Best regards,

A handwritten signature in black ink that reads "Marc Campopiano (PCK)". The signature is written in a cursive style.

Marc Campopiano  
of LATHAM & WATKINS LLP

cc: Deborah Dyer, California Energy Commission  
Laurie Lile, City of Palmdale  
Tom Barnett, Inland Energy