

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

July 31, 2009

**DOCKET**  
**09-AFC-1**

DATE 7/31/2009

RECD. 8/3/2009

Jeffery Harris  
Ellison, Schneider & Harris  
2600 Capitol Avenue, Suite 400  
Sacramento CA 95816

RE: **Application for Confidentiality, Emission Reduction Credits  
Watson Cogeneration Project  
Docket No. 09-AFC-1**

Dear Mr. Harris:

On July 1, 2009, Watson Cogeneration Company ("Applicant") filed an application for confidentiality with the California Energy Commission ("Energy Commission") in the above-captioned Docket. The Application was on behalf of Watson Cogeneration Steam and Electric Reliability Project ("Project") and the Project's Application for Certification. Applicant seeks confidentiality for information related to Applicant's strategy and plans to secure Emission Reduction Credits ("ERCs") for the Project. Applicant requests that the information be kept confidential in perpetuity.

Applicant states that the information is a trade secret, claiming:

Applicant has initiated discussions with brokers for the emission reduction credits necessary for the project. The sources and quantities of Applicant's potential emission reduction credits should remain confidential until Applicant has completed its negotiations and executed final, binding contracts for all the emission reduction credits necessary for the project. Since these contracts will have to be in place prior to facility operation, Applicant asks that this information remain confidential until that time. . . . The market for offsets in the South Coast area is highly competitive, as the supply of offsets available for purchase in the area in which the proposed project is to be constructed is limited and there are other applicants competing for these offsets. . . disclosure of this information would be very damaging to the project's licensing effort.

Applicant relies upon section 6254.7 of the California Public Records Act, which provides that data used to calculate the costs of obtaining emissions offsets are not public records.

A properly filed application for confidentiality shall be granted under the California Code of Regulations, title 20, § 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."

The Public Records Act does specifically allow for data used to calculate the costs of obtaining emissions offsets to be confidential. Gov. Code, § 6254.7(f). The application makes a reasonable argument under the California Energy Commission's regulations that the sources and quantities of Applicant's potential offsets could be used to calculate the costs of obtaining emissions offsets. Cal. Code Regs., tit. 20, § 2505.

Applicant requests that the information be kept confidential "in perpetuity." The Public Records Act, however, does not allow for such information to be kept confidential indefinitely. Section 6254.7(f) states that at the time that an air pollution control district issues a permit to construct to an applicant, data obtained from the applicant regarding offsets purchases becomes a public record. The term of confidentiality needs to be carefully specified to ensure conformance with the policies of both the Environmental Protection Agency (EPA) and the Energy Commission. The identification and evaluation of offset sources is a critical component of the Energy Commission's licensing process, including our review of environmental impacts as the lead agency pursuant to the California Environmental Quality Act (CEQA). The confidentiality of potential offset sources can only be maintained until that point when public participation in review of the project's proposed offsets becomes necessary. This will likely occur when the air district issues its Preliminary Determination of Compliance (PDOC), or at the latest when the Energy Commission staff publishes a Preliminary Staff Assessment ("PSA").

As interpreted by the EPA, the Clean Air Act requires "federally enforceable" emission reduction credit banking actions to be completed before the air district's PDOC is issued. 42 U.S.C. § 7503(a)(1). EPA's policy is that an air district's PDOC should satisfy all the requirements of a Determination of Compliance so it can be the subject of meaningful public review. 40 C.F.R. § 51.161.

Moreover, Public Resources Code § 25523, subdivision (d)(2), requires that complete emissions offsets for a proposed facility be identified before the Energy Commission licenses that facility. Staff's first use of an applicant's proposed offset sources is normally in the Preliminary Staff Assessment, which reviews the air district's PDOC. Following issuance of the PDOC, public workshops involving the Energy Commission staff, the air district, other interested agencies, intervenors, and members of the public will be held. At that time, certain aspects of the ERC acquisition plan will be discussed.

Thus, detailed information on the source, ownership, and characteristics of the offsets proposed for your project needs to become public as part of a properly issued PDOC. I therefore grant **temporary confidentiality** to Applicant's ERC strategy and acquisition plan, only until such time as the staff publishes a PSA. Accordingly, it is in your best interests that negotiations for offset sources be completed by that time.

Any subsequent submittals related to ERC offsets can be deemed confidential for the temporary term specified in this letter without the need for a new application, provided

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that 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. California Code of Regulations, title 20, § 2505, subdivisions (a)(1)(G) and (a)(4).

Persons may petition to inspect or copy the 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, § 2506. If you have any questions concerning this matter, please contact Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,



MELISSA JONES  
Executive Director

cc: Docket Unit  
Project Manager