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EXECUTIVE DIRECTOR

April 6, 2011

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VIA FEDEX

CONFIDENTIAL

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

ORIGINAL

Re: Application for Confidential Designation –  
CPV Sentinel Energy Project Power Plant (07-AFC-03-C)

Dear Ms. Jones:

CPV Sentinel, LLC proposed the CPV Sentinel Energy Project Power Plant (07-AFC-03-C) on June 6, 2007 (“Project”). On December 1, 2010, the Energy Commission approved the Application for Certification. Condition of Certification SOIL&WATER-11 of the Project Final Decision requires CPV Sentinel to submit information about additional sources of recharge water to the Compliance Project Manager (CPM) for review and approval. In accordance with SOIL&WATER-11, CPV Sentinel has obtained the right to additional water supplies from the Desert Water Agency (DWA), as further described in the attached letter to the Project CPM, Mr. Dale Rundquist, dated April 6, 2011, with exhibits (the “Submitted Record”).

Applicant requests that the CEC designate and maintain 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

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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.)

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 valuable compilation of confidential information related to CPV Sentinel obtaining the right to groundwater recharge waters from DWA to satisfy SOIL&WATER-11. Aspects of related negotiations remain ongoing and could be jeopardized if the Submitted Record is disclosed to the public. Information in the Submitted Record is not available to the public but is maintained as confidential by the parties because of sensitive technical and cost information.

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 valuable compilation of information related to CPV Sentinel obtaining the right to groundwater recharge waters from DWA to satisfy SOIL&WATER-11. Aspects of related negotiations remain ongoing and could be jeopardized if the Submitted Record is disclosed to the public. The Submitted Record is intended to be confidential.
- ***"How the advantage would be lost"*** – Time and resources have been spent compiling the information within the Submitted Record and the value of the information would be significantly impaired if made available to the public. Aspects of related negotiations remain ongoing and could be jeopardized if the Submitted Record is disclosed to the public.
- ***"The value of the information to the applicant"*** – The Submitted Record is valuable to CPV Sentinel because of the: (1) time and resources expended to compile the information; (2) efforts to maintain the confidentiality of the Submitted Record; and (3) use of the information to facilitate ongoing business negotiations.

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- ***“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 qualifies for 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 and trade secrets that are being provided to the CEC related to locating a facility within California. The Submitted Record qualifies for the exemption under 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).) The Applicant believes this letter establishes a reasonable claim for confidentiality based on the applicability of either Gov. Code § 6254(k) or Gov. Code § 6254.15.

The Applicant requests that the entirety of the Submitted Record be kept confidential indefinitely to protect the trade secret and proprietary information within the Submitted Record. 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.

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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.

Very truly yours,

  
Michael Carroll  
of LATHAM & WATKINS LLP

cc: Mark Turner, CPV Sentinel  
Mark McDaniels, CVP Sentinel  
Dale Rundquist, California Energy Commission  
Kathy Rushmore, URS Corp.  
Maggie Fitzgerald, URS Corp.  
Amanda Johnson, URS Corp.