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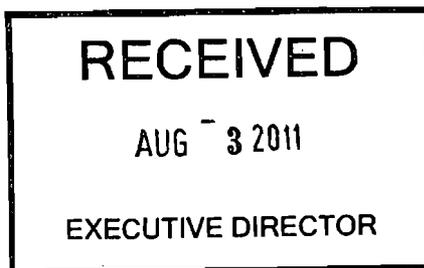
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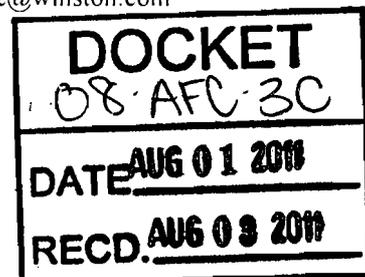
August 1, 2011

VIA OVERNIGHT DELIVERY

Robert Oglesby
Executive Director
California Energy Commission
1516 9th Street
Sacramento, CA 95814



LISA A. COTTLE
Partner
415.591.1579
lcottle@winston.com



Re: **GenOn Marsh Landing, LLC Application for Confidential Designation
Marsh Landing Generating Station (08-AFC-3C): Primary Water Supply
Analysis and Documentation for the California Energy Commission
Compliance Project Manager**

Dear Mr. Oglesby:

GenOn Marsh Landing, LLC, a Delaware limited liability company ("GenOn"), owns and is currently constructing the Marsh Landing Generating Station ("MLGS"). The MLGS is a 760 megawatt natural gas-fired peaking facility that was approved by the California Energy Commission ("Commission") in a final decision issued on August 25, 2010 in Docket 08-AFC-3 (the "Final Decision"). The Final Decision approves the use of brackish groundwater as the "primary" source of process water for the MLGS, and approves the use of fresh water supplied by the City of Antioch ("City Water") as an "alternate primary" source of process water. The Final Decision's Condition of Certification Soil & Water 6 states that the project owner may provide evidence to the Compliance Project Manager showing that the use of groundwater is not feasible, which may be based on technical feasibility and/or project economics. In that case, City Water becomes the primary source of process water with groundwater as the backup source.

In accordance with this requirement, GenOn prepared the enclosed *Primary Water Supply Analysis and Documentation for the California Energy Commission Compliance Project Manager* ("Water Supply Analysis"). The Water Supply Analysis presents and documents the results of GenOn's analysis showing that the use of groundwater as the primary source of process water is not feasible based on project economics. The Water Supply Analysis discloses

detailed information regarding project costs, which GenOn considers to be highly confidential and commercially sensitive.

Accordingly, pursuant to Title 20, California Code of Regulations section 2505 (“Section 2505”), GenOn is submitting the Water Supply Analysis with an application for confidential designation (“Application”), which is set forth below. Pursuant to Section 2505, in this Application, GenOn requests that the Commission maintain the confidentiality of the Water Supply Analysis in its entirety and not disclose the Water Supply Analysis or the information contained therein to the public or any third party. In accordance with Section 2505, GenOn provides the following information in support of its Application.

(A) Separation of the Confidential Record

As required in Section 2505(1)(A), this Application is provided on sheets that are separate from, but attached to, the Water Supply Analysis. The Water Supply Analysis is provided in the sealed envelope attached to this Application.

(B) Identification of the Confidential Record

GenOn requests that the Commission designate the Water Supply Analysis, consisting of a total of 13 pages, as confidential in its entirety. As stated above, the Water Supply Analysis is provided in the enclosed sealed envelope. Each page of the Water Supply Analysis is marked confidential with a notation indicating that the Water Supply Analysis has been submitted with this Application.

(C) Length of Time the Record Should Be Kept Confidential

As discussed below, the Water Supply Analysis reveals detailed information regarding project costs that constitutes a privileged trade secret under California law. Due to the commercial sensitivity of the information, GenOn requests that the Water Supply Analysis be kept confidential in perpetuity. As explained below, the Water Supply Analysis reveals cost data for the MLGS that would be useful to vendors and suppliers of equipment and services relating to water treatment and water supply arrangements for the project, as well as competitors and potential purchasers in the wholesale electricity markets. The cost data are expected to be commercially sensitive for the life of the project. As reflected in the Final Decision, the MLGS is expected to operate for 30 years after it commences commercial operation in 2013.

(D) Provisions of Law That Allow the Commission to Keep the Record Confidential

The California Public Records Act allows the Commission to maintain the confidentiality of information that constitutes a trade secret. (California Government Code § 6254(k); California Evidence Code § 1060.) California Civil Code Section 3426.1 specifies that

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

California courts also have defined trade secret as follows:

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 . . .

(*Uribe v. Howe*, 19 Cal.App.3d 194, 207-208 (1971).)

The Water Supply Analysis is a trade secret because it is a compilation of information regarding project costs which is used in GenOn's business and which derives independent economic value from not being known to the public or to persons who can obtain economic value from its disclosure or use. The compilation of cost information in the Water Supply Analysis also gives GenOn an opportunity to obtain an advantage over competitors who do not know or use it. This economic value and advantage arises in two separate commercial contexts, as explained below.

First, the Water Supply Analysis reveals cost data for the MLGS that would be useful to vendors and suppliers of equipment and services relating to water treatment and water supply arrangements for the project. The MLGS remains under construction and certain of these arrangements are not yet finalized. Moreover, the cost data revealed in the Water Supply Analysis could be useful to vendors and suppliers in future negotiations for water treatment and water supply arrangements over the life of the MLGS. Public disclosure of the cost data would subject GenOn to a competitive disadvantage in negotiating current and future contracts for those arrangements. Disclosure of the cost data also could disadvantage GenOn's affiliates who are developing new power plant projects and will need to procure similar water treatment and water supply services.

Second, the Water Supply Analysis reveals a portion of the project's overall capital and operating costs that could be useful to competitors and potential purchasers in the wholesale electricity markets. During the first ten years of operation, the MLGS is committed under a long-term power purchase agreement ("PPA"). After the PPA expires, the MLGS will compete with other suppliers in wholesale electricity markets. The Water Supply Analysis reveals a component of project costs that could be useful both to GenOn's competitors and to counterparties that potentially could purchase the project's output after the existing PPA expires.

The Water Supply Analysis also meets the second prong of the trade secret test in California Civil Code Section 3426.1 because it "is the subject of efforts that are reasonable under the

circumstances to maintain its secrecy.” GenOn has not disclosed the Water Supply Analysis or the cost information contained therein to anyone other than its employees, affiliate employees, contractors, consultants, and attorneys assisting in the effort to prepare the Water Supply Analysis and present it to the Commission. GenOn requires these individuals to maintain the confidentiality of the Water Supply Analysis and the information contained therein. GenOn has not disclosed the Water Supply Analysis to any other person or to the public generally.

(E) Aggregation and Masking of the Confidential Record

The Water Supply Analysis is specifically tailored to the analysis of costs associated with the two process water supply options available for the MLGS. Because the costs are project specific, GenOn cannot envision a scenario in which the project costs could be aggregated with other data in a way that preserves the confidentiality of MLGS-specific data. GenOn asks that the Commission not release the Water Supply Analysis or information contained therein in any form.

Regarding the potential masking of information, project costs and economics are discussed throughout the Water Supply Analysis. GenOn therefore asks the Commission to maintain the confidentiality of the Water Supply Analysis in its entirety.

(F) The Record is Presently Confidential

As stated above, GenOn has not disclosed the Water Supply Analysis or the cost information contained therein to anyone other than its employees, affiliate employees, contractors, consultants, and attorneys assisting in the effort to prepare the Water Supply Analysis and present it to the Commission. GenOn requires these individuals to maintain the confidentiality of the Water Supply Analysis and the information contained therein. GenOn has not disclosed the Water Supply Analysis to any other person or to the public generally.

Thank you for your consideration of this Application. As stated above, GenOn is submitting the Water Supply Analysis in the enclosed sealed envelope. This sealed envelope may be opened only if the foregoing Application is granted. If the Executive Director determines that the Water Supply Analysis does not qualify for confidential treatment, GenOn requests that the Water Supply Analysis be returned to the undersigned in the sealed envelope.

I certify under penalty of perjury that the information contained in the foregoing Application is true, correct, and complete to the best of my knowledge. The applicant, GenOn Marsh Landing, LLC, is a Delaware limited liability company. I am authorized to make this Application and certification on behalf of the applicant.

Very truly yours,

Lisa Cottle ^{MAJ.}

Lisa A. Cottle
Winston & Strawn LLP
Counsel for GenOn Marsh Landing, LLC

Enclosure: Sealed envelope containing ***Marsh Landing Generating Station (08-AFC-3C):
Primary Water Supply Analysis and Documentation for the California Energy
Commission Compliance Project Manager***

Cc: Christine Stora, Compliance Project Management (without enclosure)
Kevin Bell, Commission Staff Counsel (without enclosure)