

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



September 2, 2011

DOCKET**08-AFC-3C**DATE SEP 02 2011RECD. SEP 07 2011

Lisa A. Cottle
Winston & Strawn LLP
101 California Street
San Francisco, CA 94111

**RE: Application for Confidential Designation: Primary Water
Supply Analysis
Docket No. 08-AFC-3C**

Dear Ms. Cottle:

On August 3, 2011, GenOn Marsh Landing, LLC, filed an application for confidentiality to the above-captioned docket, on behalf of Marsh Landing Generating Station ("Applicant"). The application seeks confidentiality for a document related to the project's water supply. Specifically the Applicant requests confidentiality for the *Primary Water Supply Analysis and Documentation*.

The application originally sought confidentiality in perpetuity but staff raised concerns regarding such an indefinite term. On August 26, 2011, after discussions with staff, the Applicant, agreed to modify the application limiting the term of confidentiality to the life of the Marsh Landing Generating Station or at least 30 years.

The application states that the *Primary Water Supply Analysis and Documentation* contains confidential trade secrets and commercially sensitive data relating to project costs and pricing. The cost data for the project would be useful to vendors and suppliers of equipment and services relating to water treatment and water supply arrangements for the project. Public disclosure of the cost information would subject GenOn Marsh Landing LLC to a competitive disadvantage in negotiating current and future contracts for water treatment and supply. In addition, the Water Supply Analysis reveals a portion of the project's overall capital and operating costs and could be useful to competitors and potential purchasers in the wholesale electricity markets.

A properly filed Application for Confidentiality shall be granted under the California Code of Regulations, title 20, section 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 California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.) The California courts have traditionally used the following definition of trade secret:

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* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, the application shall state: 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.

Applicant has made a reasonable claim that the law allows the Commission to keep the *Primary Water Supply Analysis and Documentation* confidential on the grounds that it contains trade secrets and/or proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for harming Applicant's business.

Applicant requests that the *Primary Water Supply Analysis and Documentation* be kept confidential for the life of the facility or at least 30 years and that the report represents the maximum extent to which information can be aggregated and masked.

For the above reasons, your request for confidential designation of the *Primary Water Supply Analysis and Documentation* is granted. The data will remain confidential until the life of the facility or at least 30 years.

Be advised that persons may petition to inspect or copy 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, section 2506. If you have any questions concerning this matter, please contact Jared Babula, Staff Counsel, at (916) 651-1462.

Sincerely,

/s/

Robert Oglesby
Executive Director

cc: Docket Unit
Energy Commission Compliance Project Manager