

DOCKETED	
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November 30, 2021

Via Email

Victoria Croft
Valero Refining Company – California
DBA Valero Benicia Refinery
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Application for Confidential Designation for Third Quarter 2021 Quarterly Fuel Gas Sulfur Report, Docket No. 01-AFC-05C

Dear Victoria Croft:

The California Energy Commission (CEC) received an application for confidential designation on November 11, 2021, from Valero Benicia Refinery (applicant) covering specified data contained in the Third Quarter (3Q) 2021 Quarterly Fuel Gas Sulfur Report under CEC Condition of Certification AQ-36. Specifically, the applicant seeks confidentiality for the following data in the report:

- 1) Hours firing natural gas
- 2) Hours firing process gas
- 3) Maximum daily average fuel consumption
- 4) Daily fuel consumption

The application notes that this information contains proprietary business information and trade secrets and that disclosure to the public would be harmful to the applicant. The application further states that information contained in the report cannot be aggregated in a manner allowing release.

A properly filed Application for Confidentiality shall be granted under 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 Commission to keep the record confidential.” The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code section 6254(k); Evid. Code section 1060.)

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. Howie* (1971) 19 Cal. App. 3d 194, 207, citing the Restatement of Torts, vol. 4, section 757, comment b, p.5.)

California Code of Regulations, Title 20, section 2505(a)(1)(D) states that if an 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, an application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to an applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Regarding hours firing natural gas, hours firing process gas, maximum daily fuel consumption, and daily fuel consumption, the applicant in this and prior quarterly report applications for confidentiality states disclosure of the applicant's cogeneration operational data is indicative of firing rates and the design capacity of the cogeneration unit. The applicant further states that the operational design of the cogeneration unit is a trade secret, and such information could be used by competitors and vendors to disadvantage the applicant by knowing specific operational parameters of the cogeneration unit. The applicant states that the data is kept on secure servers and has not been publicly disclosed. The applicant has made a reasonable claim that the specific fuel consumption data at the hourly and daily level in the Quarterly Fuel Gas Sulfur report is a proprietary trade secret, public disclosure of which could harm the applicant's business.

Please note that fuel consumption data aggregated to a monthly level is not confidential. Under Title 20, California Code of Regulations, section 1304(a), the CEC receives monthly fuel consumption data for most power plants in the state and publishes the data on its webpage. Staff has indicated that the applicant's facility has been reporting monthly fuel consumption data to the CEC since it came online in 2002 and that data has been continuously made public through that program. Therefore, daily fuel consumption data aggregated to a monthly level will continue to be public.

The applicant requests the term of confidentiality for the four categories of data be indefinite, but in prior applications the term requested was three years. The applicant has not made a showing as to why the term should be extended for this quarterly report.

Executive Director's Determination

For the reasons stated above, the applicant's request for confidential designation for the data contained in the 3Q 2021 Quarterly Fuel Gas Sulfur Report, as described in items 1 through 4, is granted until November 12, 2024. Fuel consumption data aggregated to a monthly level will continue to be public.

Be advised that under Title 20, California Code of Regulations, section 2506, one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy records is issued by the CEC's Chief Counsel. Under Title 20, California Code of Regulations, section 2507, the Executive Director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set forth in Title 20, California Code of Regulations, sections 2506-2507.

You may seek a confidential designation for information that is substantially similar to information for which an application for confidential designation was granted by the Executive Director by following the procedures set forth in Title 20, California Code of Regulations, section 2505(a)(4).

If you have any questions concerning this matter, please contact Jared Babula, senior attorney, at jared.babula@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Bohan", with a long horizontal flourish extending to the right.

Drew Bohan
Executive Director