

DOCKETED	
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Project Title:	Black Rock Geothermal Project (BRGP)
TN #:	252578
Document Title:	Application for Confidential Designation of Response to ICAPCD Data Request #1, Attachment B
Description:	N/A
Filer:	Amanda Cooley
Organization:	Ellison Schneider Harris & Donlan LLP
Submitter Role:	Applicant Representative
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October 11, 2023

Drew Bohan
Executive Director
California Energy Commission
715 P Street
Sacramento, CA 95814

RE: **Black Rock Geothermal Project (23-AFC-03): Application for Confidential Designation of Response to ICAPCD Data Request #1, Attachment B**

Dear Mr. Bohan:

Pursuant to Sections 2505 et seq., of Title 20 of the California Code of Regulations, Black Rock Geothermal LLC hereby submits this *Application for Confidential Designation* for the following document provided in response to the Imperial County Air Pollution Control District's ("ICAPCD") September 29, 2023, Information Request:

- Response to ICAPCD Data Request #1, Attachment B, Brine Composition Analytical Data

Please contact us at 916-447-2166 should you have any questions or require additional information. Thank you.

Sincerely,

/s/

Jessica L. Melms
Christopher T. Ellison
Samantha G. Neumyer
Ellison Schneider Harris & Donlan LLP

Attorneys for Applicants

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1. *Specifically indicate those parts of the record which should be kept confidential.*
a. Title, date, and description (including number of pages) of the information or data for which you request confidential designation.

Black Rock Geothermal LLC, Morton Bay LLC, and Elmore North LLC (“Applicants”) seek confidential designation for the following information (the “Information”) submitted in response to ICAPCD Data Request #1 on behalf of the Black Rock Geothermal Project, Morton Bay Geothermal Project, and Elmore North Geothermal Project (collectively, the “Projects”):

Title	AFC Subject Area/ Description	# of Confidential Pages
Response to ICAPCD Data Request #1, Attachment B, Brine Composition Analytical Data	Air Quality	32

- b. Parts of the information or data for which you request confidential designation.*

The Information should be kept confidential in its entirety.

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

The information should be kept confidential for the life of the Projects. The Information contains data regarding the performance of the geothermal resource underlying the Projects and is considered proprietary business information. The Information is not publicly available, and its disclosure would provide competitors with valuable economic information regarding the underlying geothermal resource and its performance.

3. *Cite and discuss:*
- (a) the provisions of the Public Records Act or other law that allow the Commission to keep the information or data confidential, and explain why the provision applies to the material.*
- (b) the public interest in nondisclosure of the material submitted for confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.*

The Information is exempt from disclosure under Sections 7924.510, 7927.605, and 7922.000 of the Government Code.

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First, the Public Records Act (“PRA”) provides “data that constitute trade secrets and that are used to calculate emission data are not public records.”¹ The Information meets this PRA exemption because it contains data used to calculate emissions data and constitutes trade secret information. Specifically, the Information is not air emission data or otherwise provided as part of monitoring reports. Instead, the Information is comprised entirely of data used to estimate emissions for the purposes of calculating the ratio of non-condensable gas constituents in the steam. In turn, the Information satisfies the requirement that it is used to calculate emission data.

Additionally, the Information constitutes a trade secret, as defined in Section 7924.510. Section 7924.510 states that a trade secret may include, but is not limited to, any process, compound, production data, or compilation of data that meet the following requirements: “(1) it is not patented, (2) it is known to only certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and (3) it gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.” The Information is not patented and is only known to certain individuals. Finally, the Information provides detailed information regarding the underlying geothermal resource and well productivity, which provides a business advantage over competitors who do not have similar information.

Second, the Information should also be protected pursuant to Gov’t Code §7927.605(a). Here, the legislature broadly protects private industry trade secrets from disclosure, as well as “corporate proprietary information.” The privilege protecting disclosure of trade secrets pertains to processes, plans, or other information applicable to a service (here, the production and delivery of energy and capacity) that has value or provides the holder of the trade secret an opportunity to obtain an advantage over business competitors.² The Information contains highly confidential information relating to the well composition, which informs emission calculations. The Information provides data regarding how the resource is functioning at each specific well based on the breakdown of non-condensable gas in the steam, which enables operators to determine the output of the geothermal resource. If an outside entity gained access to this information, they would be unfairly apprised of confidential data regarding the resource’s output in this area. Entities developing geothermal facilities operate in a fiercely competitive arena where potential competitors could use information made accessible through this well data to gain insights they otherwise would not regarding the viability of the geothermal resource in this area and the productivity of the wells. This would harm the Applicants directly or indirectly through the loss of its competitive advantage.

Third, the PRA provides a specific exclusion from disclosure where “...on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov’t Code § 7922.000.)

In this case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure. As noted above, the Applicants have an interest in protecting the confidential business information from disclosure as it could impact their

¹ Gov’t Code Section 7924.510.

² Gov’t Code Section 7927.605.

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competitiveness in the energy markets. The public interest in disclosure is low, as the Information is not required to be produced by any regulatory agency and is used to evaluate resource production and estimate emissions information. Accordingly, the public interest in maintaining the confidential business information in confidence outweighs the need to disclose this record.

4. *State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

The Applicants considered whether it would be possible to aggregate or mask portions of the Information. Given the specific geographic region where the Information was obtained, the Applicants do not believe that the Information can be easily aggregated or masked to prevent disclosure of the confidential business information.

5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

The Information is accessible only to the Applicants' employees or consultants working on behalf of the Projects, agencies with regulatory oversight over the Projects, and operational staff and consultants on a need-to-know basis. The Information was provided to the ICAPCD on October 4, 2023 in response to a request for information and marked as confidential business information.

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 and belief. I am authorized to make this Application and Certification on behalf of the Applicants.

Dated: October 11, 2023

By:

/s/

Jessica L. Melms
Christopher T. Ellison
Samantha G. Neumyer
Ellison Schneider Harris & Donlan LLP

Attorneys for Applicants