

DOCKETED

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June 21, 2024

Via Email

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**Application for Confidential Designation: Lodi Energy Center FX Project
Upgrade
Docket No. 08-AFC-10C**

Dear Rafael Santana:

The California Energy Commission (CEC) received an application for confidential designation from Northern California Power Agency (applicant), docketed June 5, 2024 (TN 256694), covering data on the site conditions and gas turbine exhaust mass flow performance for the Lodi Energy Center Project (Project). The applicant submitted this information to the CEC as part of a Project Change Questionnaire related to a proposed system upgrade to increase the Project's turbine efficiency.

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."

Trade Secret Exemption

The application states that the document includes mass flow, fuel flow, site conditions, emissions, and firing temperature data that will be used as part of the applicant's assessment for their proposed system upgrade. A third party, Siemens Energy, collected this information to improve the facility's efficiency and product output. The applicant states that Siemens Energy maintains the confidentiality of its upgrade design, research, and application of its technology and only releases the information for use by customers under nondisclosure or similar agreements. According to the application, the document contains trade secrets related to the Project's site conditions and gas turbine exhaust mass flow performance. The applicant states that disclosure of this information would provide a competitive advantage to another turbine manufacturer or retrofit entity by minimizing their risk, research, and development phase.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform

Trade Secrets Act. (Gov. Code, §§ 7927.705(k), 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

Civil Code section 3426.1(d) defines “trade secret” as:

[I]nformation, 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.

(Civ. Code, § 3426.1(d); See also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

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, 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.

The application addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) by stating:

- 1) *The specific nature of the advantage* – The documents include information on the gas turbine performance and site conditions used to increase the Project’s efficiency and power output. This information has independent economic value from not being generally known to the public or turbine manufacturer competitors.
- 2) *How the advantage would be lost* – Disclosure of the information may result in competitors deconstructing the data and using software to model the information. The competitor’s risk, research, and development costs will be substantially lessened. This will allow competitors to bring similar performance upgrades to market at a discounted rate resulting in loss of future revenue and advantage in the market.
- 3) *The value of the information to the applicant* – The data provides the following benefits to the facility: increase in unit reliability, efficiency gains, increase in power output, and will allow the applicant to burn hydrogen without a detrimental loss in power output.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information is accessible only to Siemens Energy customers under nondisclosure agreements. The data is given only to key personnel involved in the upgrade project. The applicant is bound by a nondisclosure agreement with Siemens Energy to keep the designated information confidential. The applicant retains this information in confidential, limited access files.

Executive Director's Determination

The applicant has made a reasonable claim that the data on the Project's site conditions, and gas turbine exhaust mass flow performance contain commercially sensitive information. Therefore, the data will be maintained as confidential indefinitely.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, 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 and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director