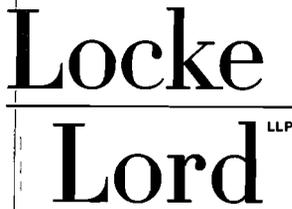


DOCKETED

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September 19, 2013

VIA HAND-DELIVERY

El Segundo Energy Center Petition to Amend (00-AFC-14C) Siting Committee
Commissioner Karen Douglas – Presiding Member
Commissioner Janae A Scott – Associate Member
Paul Kramer – Hearing Officer
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Re El Segundo Energy Center Petition to Amend (00-AFC-014C)
Application for Confidential Designation of Socioeconomic Records (DR #85)

Dear Committee Members

El Segundo Energy Center LLC (“ESEC LLC” or “Applicant”) submits this Application for Designation of Confidential Records with respect to the attached information pertaining to Socioeconomics (Attachment A) (the “Confidential Data”) ESEC LLC is submitting this Application in response to the Commission’s Data Request Number 85 (the “DR85 Response”) for ESEC LLC’s Petition to Amend (the “Petition”) the El Segundo Energy Center project (00-AFC-014C) (the “Project”) The Petition and the DR85 Response contain extensive socioeconomic data and analysis

ESEC LLC hereby requests confidential designation of the attached Confidential Data under Title 20, California Code of Regulations, section 2505 ESEC LLC understands that, pursuant to Title 20, California Code of Regulations sections 2505(a)(2) and (a)(3)(B), the attached information will not be publicly disclosed while this Application for Confidential Designation, or any appeal of the Commission’s determination regarding this Application, remains pending

ESEC LLC provides the following information in support of its Application

(a) *Description/Separation of the Confidential Records*

Attachment A, which is marked “Confidential,” is the subject of this Application and pertains to the socioeconomic impact of the demolition, construction, and operation of the

Project This material includes confidential data and analysis related to Applicant's proprietary business strategies and plans to secure labor, equipment and services for the modified ESEC facility. This data constitutes trade secret information pursuant to California law, as is discussed in more detail below.

(b) Specific Indication of Those Parts of the Record to be Kept Confidential

Applicant requests that the Commission designate the record in Attachment A, which contains Applicant's DR85 Response and related confidential, proprietary data, as confidential in its entirety. A summary of the socioeconomic data for the Project and an analysis of the potential impacts of that information are presented in Section 3.9 of the Petition and in non-confidential portions of the DR Response.

(c) The Length of Time the Record Should be Kept Confidential

The Confidential Data in Attachment A should be kept confidential permanently. This Data assists Applicant in conducting its business. It consists of confidential trade secrets. Public disclosure of this Confidential Data would impair the process by which Applicant and other companies negotiate for services and materials, particularly with regard to the construction and operation of energy facilities. Consequently, Applicant's concern about maintaining the confidentiality of this Data will continue after the conclusion of this Petition procedure and the construction of approved Project.

(d) Provisions of Law Allowing the Commission to Keep the Record Confidential. As Trade Secrets and Proprietary Corporate Information, the Confidential Data is Protected from Public Disclosure, Applicant's Competitive Advantage would be Lost If Such Data were Publicly Disclosed, and If Publicly Disclosed, This Data Could be Easily Acquired by Members of the Public, Including Applicant's Competitors

The Confidential Data requested by the Commission's Data Request 85 will aid in assessing the Project's potential socioeconomic benefit on the local economy. However, as previously noted, the requested analysis is based on confidential, proprietary data the disclosure of which would damage Applicant's competitive advantage.

The Commission may designate a record as confidential and require that it not be publicly disclosed if the California Public Records Act or other law provides for that record to be treated as confidential, and if the party giving the Commission custody of such record provides certain information about that record (20 CCR §2505(a)(1)). The Confidential Data in Attachment A is protected from public disclosure by Government Code Sections 6254.15, 6255 and 6254(k) and Evidence Code Section 1060.

(i) Protection from Disclosure Pursuant to Government Code Section 6254.15
Government Code Section 6254.15 exempts from public disclosure corporate proprietary information including trade secrets, corporate financial records, and information related to siting (Gov't Code Sec 6254.15). Applicant is furnishing this Confidential Data to the Commission to allow the Commission to work with Applicant in modernizing the ESEC facility. The Confidential

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Data is proprietary corporate information. Therefore, the Commission is authorized to protect the Confidential Data from disclosure.

(ii) Protection from Disclosure Pursuant to Government Code Section 6255 This section of the Public Resources Code allows public agencies to withhold any public record in when the public interest served by not disclosing the record outweighs the public interest served by disclosure of the record (Gov't Code Section 6255). The public interest is served by maintaining the secrecy of Applicant's negotiation strategies due to the competitive nature of the energy market in California.

(iii) Protection from Disclosure Pursuant to Government Code Section 6254(k) and Evidence Code Section 1060 The Public Records Act also protects the confidentiality of any records that are exempted from disclosure under federal and state law, including those protected by provisions of the California Evidence Code relating to privilege, such as Evidence Code section 1060 [Gov't Code §6254(k)]. Evidence Code section 1060 privileges owners of trade secrets to "refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice." As discussed below, the Confidential Data constitutes trade secrets protected from public disclosure under the California Public Records Act [Government Code Section 6254(k), Evidence Code Section 1060]. Accordingly, the Evidence Code Section 1060 privilege applies to protect the Confidential Data from public disclosure by the Commission.

A trade secret is "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 advantage from its disclosure or use, and" (2) is the subject of reasonable efforts to maintain its secrecy (Civil Code Section 3426.1(d)). Applicant maintains the Confidential Data in confidence, using the measures described in Subsection (f) of this letter. The Confidential Data contains socioeconomic information, including proprietary information related to Applicant's estimates of labor and material costs, derived from Applicant's proprietary corporate records. This Confidential Data is integral to Applicant's confidential business strategy and plan for the modified ESEC facility. By maintaining the privacy of this information, Applicant is able to retain its competitive advantage. This information has independent economic value because Applicant uses it in the conduct of its business, including in its negotiations with potential employees, labor unions, material suppliers, logistics companies and other construction and operational service providers.

Applicant has expended substantial time and resources in developing and refining the Confidential Data. Due to the competitive nature of the energy and labor markets, Applicant derives significant value from this Data remaining undisclosed to the public, stakeholders, or Applicant's competitors. Public disclosure of this information could cause Applicant to lose its competitive advantage in the energy market generally, due to inability to control costs, as well as in negotiations for labor, services and materials. Were potential employees, equipment suppliers or service providers allowed access to this information, those parties could derive economic value from such disclosure, as they could take advantage of Applicant in business negotiations with Applicant. Access to this Confidential Data would also give Consultant's competitors a business advantage. Competitors could then use this information to hinder

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Applicant's business transactions Applicant respectfully requests that the Commission maintain the confidentiality of the enclosed Confidential Data

(e) Aggregation and Masking of the Confidential Data

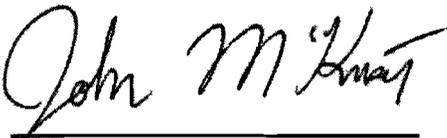
Applicant has distilled the Confidential Data from Applicant's broader business strategy for ESEC, and the enclosed Confidential Data cannot be masked or aggregated without disclosing the Confidential Data or rendering it useless

(f) The Submitted Record Is Presently Confidential

Applicant has not disclosed the socioeconomic data to anyone other than its employees affiliate employees, consultants, and attorneys assisting Applicant with efforts related to the Petition Furthermore, Applicant has not released any of the information contained in Attachment A to any member of the general public or stakeholders and has prohibited its employees, affiliate employees, consultants and attorneys from releasing to the public any portion of such information at any time

I certify under penalty of perjury that the information contained in this Application is true, correct, and complete to the best of my knowledge As an attorney for ESEC LLC, I am authorized to make the above certification and to submit this Application on behalf of ESEC LLC

Locke Lord LLP

By 

John A. McKinsey

Attorneys for El Segundo Energy Center LLC

JAM awph

Enclosure

DECLARATION OF SERVICE

I, Dee Hutchinson, declare that on September 19, 2013, I served and filed copies of the Application for Confidential Designation of Socioeconomic Records dated September 19, 2013. The most recent Proof of Service List, which I copied from the web page for this project at <http://www.energy.ca.gov>, is attached to this Declaration.

(Check one)

For service to all other parties and filing with the Docket Unit at the Energy Commission

I successfully uploaded the document to the Energy Commission's e-filing system and I personally delivered the document or deposited it in the US mail with first class postage to those persons for whom a physical mailing address but no e-mail address is shown on the attached Proof of Service List [The e-filing system will serve the other parties and Committee via e-mail when the document is approved for filing] or

I e-mailed the document to docket@energy.ca.gov and I personally delivered the document or deposited it in the US mail with first class postage to those persons for whom a physical mailing address but no e-mail address is shown on the attached Proof of Service List [The e-filing system will serve the other parties and Committee via e-mail when the document is approved for filing] or

Instead of e-filing or e-mailing the document, I personally delivered it or deposited it in the US mail with first class postage to all of the persons on the attached Proof of Service List for whom a mailing address is given and to the

California Energy Commission – Docket Unit
Attn: Docket No 00-AFC-14C
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

[The e-filing system will serve an additional electronic copy on the other parties and Committee via e-mail when the paper document or CD is received, scanned, uploaded, and approved for filing. The electronic copy stored in the e-filing system is the official copy of the document.]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated September 19, 2013


Dee Hutchinson

Proof of Service List

Docket 00-AFC 14C

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