

DOCKETED

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CALIFORNIA ENERGY COMMISSION

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October 2, 2013

John A. McKinsey
Locke & Lord LLP
500 Capitol Mall, Suite 1800
Sacramento, CA 95814

RE: **El Segundo Energy Center**
Application for Confidential Designation: Air Quality Data Equations,
Formulas and Calculations
Docket No. 00-AFC-14C

Dear Mr. McKinsey:

The California Energy Commission has received an Application for Confidentiality submitted by El Segundo Energy Center LLC ("Applicant"). The Application seeks confidential designation for the following aspects of a report related to air quality data:

- 1) Equations, formulas and calculations contained in the Air Quality Data spreadsheet provided in response to Data Requests No. 13.

The Application notes that confidentiality is sought for the proprietary equations formulas and calculations used to produce the air quality data and analysis and not for the results of the calculations and equations. The Application identifies the equations, formulas and calculations as trade secrets which provide the Applicant and its consultant, Sierra Research, with economic value and which were derived at substantial time and resources. The Applicant has never released the proprietary information publically.

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.

The Application addresses these four elements. 1) The proprietary formulas have independent economic value, as Applicant's consultant, Sierra Research, has expended substantial time and resources in developing the formulas. 2) Were potential clients of Consultant allowed access to this information, those parties would derive economic value from such disclosure as they could obtain the benefit of Consultant's services without compensating Consultant for those services. 3) Sierra Research uses these formulas to produce the air quality data and analysis provided to its clients providing value to both Sierra Research and its clients. 4) Disclosure of these formulas to competitors would give those competitors a business advantage over Sierra Research because those competitors could sell data and analysis derived from those Formulas without investing the time and expertise required to develop the calculations and formulas.

Because the Application relates to Air Quality data two additional sections of the Government Code are particularly relevant to this Application.

Government Code 6254.7(a) states, "All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution...which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide...are public records."

Government Code 6254.7(e) states, "Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade secrets as defined in subdivision (d), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data which constitute trade secrets and which are used to calculate emission data are not public records."

The Application is clear that confidentiality is being sought for proprietary equations, formulas and calculations and not the nature, extent, quantity or degree of air contaminants. Therefore, the Applicant has made a reasonable claim that the law allows the Energy Commission to keep the equations, formulas and calculations contained in the above listed report confidential on the grounds that they are trade secrets and/or proprietary information. The information has been developed exclusively by Applicant's consultant for Applicant's use, contains information that is not public, and has the potential for economic advantage.

Applicant requests that the information be kept confidential indefinitely. Because the proprietary equations, formulas and calculations have use beyond the El Segundo project and it is anticipated the proprietary information will continue to have value as long as air emission data is required to be produced by regulators, it is appropriate to grant confidentiality for an indefinite time period.

For the above reasons, your request for confidential designation for the equations, formulas and calculations contained in the Air Quality data spreadsheet provided in response to data request No. 13 is granted. The information will remain confidential indefinitely.

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,



Robert P. Oglesby
Executive Director

cc: Docket Unit
Craig Hoffman, Compliance Project Manager
Matthew Layton, Air Quality