

## DOCKETED

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November 3, 2014

Robert P. Oglesby  
Executive Director  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

Re: Application for Confidential Designation: High Desert Power Project (97-AFC-1C)

Dear Mr. Oglesby:

Pursuant to Sections 2501 *et seq.*, of Title 20 of the California Code of Regulations, High Desert Power Project, LLC (“HDPP”) submits this *Application for Confidential Designation* for Exhibits A through D, and Exhibits F through G, to the *High Desert Power Project Recycled Water Feasibility Study Report* filed on November 3, 2014. Five hard copies of these exhibits have been submitted directly to the Docket Office.

Please feel free to contact me at (916) 447-2166 should you have any questions or require additional information.

Sincerely,

/s/

Samantha G. Pottenger  
Ellison, Schneider & Harris L.L.P.

Attorneys for HDPP, LLC

**APPLICATION FOR CONFIDENTIAL DESIGNATION**  
**High Desert Power Project (97-AFC-1C)**  
**High Desert Power Trust (the “Applicant”)**

1. *Specifically indicate those parts of the record which should be kept confidential.*

HDPP requests confidential designation of the following exhibits (collectively, the “Exhibits”), and all information contained therein, to the *High Desert Power Project Recycled Water Feasibility Study Report*:

- Exhibit A. Cardno-ENTRIX Report - Availability and Use of Recycled Water at the High Desert Power Project;
- Exhibit B. Kiewit Power Engineers Exhibit - Recycled Water Technical Feasibility Study;
- Exhibit C. HDPP Recycled Water Delivery and Use Logs;
- Exhibit D. HDPP Report - Recycled Water Economic Analysis;
- Exhibit F. Impact of 100% Recycled Water Use on Facility Operations and Maintenance Costs; and
- Exhibit G. Monthly and Annual Energy Production Since Becoming Operational.

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

Consistent with applicable law, the Exhibits should be held confidential for the life of the High Desert Power Project in order to protect the proprietary and confidential trade secret information. Thus, this information should be kept confidential until the completion of decommissioning and closure activities for the facility, which will be described in a closure/decommissioning plan submitted to Commission Staff at least 12 months prior to commencing the closure activities.

3. *Cite and discuss (i) the provisions of the Public Records Act or other law which allow the commission to keep the record confidential and (ii) the public interest in nondisclosure of the record.*

There are several applicable provisions of the Public Records Act that requires that the Commission keep the Exhibits confidential as the Exhibits contain corporate financial, proprietary, and trade secret information. Section 6254.15 of the Public Records Act exempts from disclosure “corporate financial records, corporate proprietary information including trade

secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California.” Section 6254.7(d) of the Public Records Act exempts “trade secrets”<sup>1</sup> from public disclosure, including “any formula, plan, ...production data, or compilation of information..., which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service...and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.” Finally, Section 6254(e) of the Public Records Act exempts from disclosure “[g]eological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.”

Section 6254.14 applies to exempt the Exhibits from disclosure as the Exhibits contain confidential corporate financial and proprietary information, which is being provided to the Commission for the purpose of permitting the agency to work with HDPP in retaining, and potentially expanding the use of recycled water at the facility within California. Corporate financial information in the Exhibits is used to examine and explain whether converting to 100% recycled water is economically feasible. The Exhibits also contain corporate proprietary information, including trade secret information such as the processes employed at the High Desert Power Project to produce and sell electricity, resources used and possessed by the corporation, and net generation from the facility. Thus, the Exhibits are protected from disclosure under Section 6254.14.

Section 6254.7(d) also applies to the Exhibits, as the Exhibits contain trade secrets, including plans, production data, and other compiled information which is known only to certain individuals within HDPP, and is used by HDPP to make business and investment decisions, and to generate and electricity. Such information gives HDPP a business advantage over competitors who do know or use it. Public disclosure would affect HDPP’s ability to participate in the California Independent System Operator markets or otherwise effectively negotiate and secure contracts.

Section 6254(e) also applies to the Exhibits, as the exhibits contain information regarding water production and usage, facility processes, and other utility system development information that is similar to geological and geophysical data protected under the Public Records Act. The Exhibits also contain production data for the facility, which is exempted from disclosure pursuant to Section 6254(e).

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<sup>1</sup> The California Civil Code Section 3426.I(d) further defines a “trade secret” as follows:

- (d) “Trade secret” means 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 value from its disclosure or use; and
  - (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

