

DOCKETED

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CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

February 08, 2016

Jeffery D. Harris
Ellison, Schneider & Harris LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816

RE: **Application for Confidential Designation for Financial Information and Revised Exhibit D to the Recycled Water Feasibility Study Report High Desert Power Project**
Docket No. 97-AFC-1C

Dear Mr. Harris:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of High Desert Power Project, LLC (Applicant). The application seeks confidential designation for the following documents (Confidential Records):

- 1) *Consolidated Financial Statements (2013 and 2014, audited);*
- 2) *Consolidated Balance Sheets (September 30, 2015 and December 31, 2014, unaudited); and*
- 3) *Revised Exhibit D to the High Desert Power Project Recycled Water Feasibility Study Report, November 3, 2014, HDPP Report – Recycled Water Economic Analysis.*

The application states that confidentiality is sought for corporate financial and proprietary information, including trade secrets, contained in the Confidential Records provided to the California Energy Commission to support consideration of alternative water supplies for the facility. Applicant notes that no feasible method of aggregating or masking information in the Confidential Records could be identified and that the Confidential Records have not been disclosed publicly.

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 California 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.) 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, comment 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 Confidential Records include trade secrets—such as operating expenses for Applicant to produce and sell electricity, resources used and possessed by Applicant, and net generation from the proposed facility—which give Applicant a business advantage over competitors who do not know or use the information; 2) Public disclosure of the trade secret information would affect Applicant's ability to participate in the California Independent System Operator markets or otherwise effectively negotiate and secure contracts; 3) Applicant uses the trade secret information to make business and investment decisions and to generate and sell electricity; 4) The Confidential Records contain plans, production data, and other compiled information which is known only to certain individuals within Applicant's Corporation.

Government Code, section 6254.15 exempts from disclosure under the California Public Records Act 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. In this case, the submitted Corporate Records relate to the siting of a facility in the state.

Furthermore, Government Code, section 6254(e) exempts from disclosure under the California Public Records Act "[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." Application states that Confidentiality is sought for facility processes, production data, operations, and other utility system development information being provided to the Energy Commission. The described information meets the defined exemption under section 6254(e).

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The application is clear that confidentiality is being sought for corporate financial and proprietary information, including trade secret information, related to the siting of a state facility. Therefore, the Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the Confidential Records from public disclosure on the grounds that they are trade secrets and/or proprietary information.

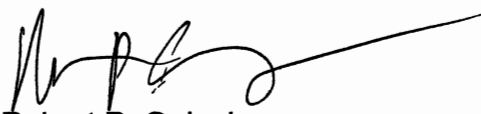
Applicant requests that the information be kept confidential for the life of the High Desert Power Project. The trade secret and proprietary information has value only as long as the power plant is needed to produce and sell electricity; therefore, it is appropriate to grant confidentiality for the life of the project.

For the reasons stated above, the request for confidential designation for the Confidential Records is granted. The information will remain confidential for the life of the High Desert Power Project.

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, Senior Staff Counsel, at (916) 651-1462.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. P. Oglesby', with a long horizontal line extending to the right.

Robert P. Oglesby
Executive Director

cc: Docket Unit
Joe Douglas, Energy Commission Project Manager
Paul Marshal, Water and Waste Unit