

DOCKETED

Docket Number:	15-AFC-01
Project Title:	Puente Power Project
TN #:	210272
Document Title:	Applicant's Letter Regarding Revised Modeling Files - Application for Confidential Designation
Description:	N/A
Filer:	Paul Kihm
Organization:	Latham & Watkins LLP
Submitter Role:	Applicant Representative
Submission Date:	2/11/2016 1:51:45 PM
Docketed Date:	2/11/2016

650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +1.714.540.1235 Fax: +1.714.755.8290
www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

Abu Dhabi	Milan
Barcelona	Moscow
Beijing	Munich
Boston	New Jersey
Brussels	New York
Century City	Orange County
Chicago	Paris
Dubai	Riyadh
Düsseldorf	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

February 11, 2016

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

Re: Puente Power Project (15-AFC-01)
Revised Modeling Files - Application for Confidential Designation

Dear Mr. Oglesby:

On November 30, 2015, NRG Oxnard Energy Center, LLC (“Applicant”) docketed the results of updated air quality modeling for the Puente Power Project (“P3”). The results are contained in Appendix 49-1 of Applicant’s Responses to CEC Data Request Set 2 (TN #206791). On December 2, 2015, Applicant provided a confidential file containing the detailed emission calculations in support of the updated modeling analysis. The file consists of a live electronic Excel spreadsheet comprised of several subsheets which include the detailed operational and commissioning emission calculations (“Confidential Record”). In a letter from me dated December 2, 2015, Applicant requested that the entirety of the Confidential Record be permanently maintained as confidential (TN # 206818). We are hereby submitting a revised request for confidential treatment of the Confidential Record, supported by the attached Application for Confidential Designation prepared by Sierra Research, Inc. This request replaces the December 2, 2015 request.

According to the CEC’s regulations, an application for confidential designation “shall be granted 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.” Title 14, California Code of Regulations, § 2505(a)(3)(A). Applicant believes the attached Application for Confidential Designation establishes a reasonable claim for confidentiality. We note that the Confidential Record has been provided to Intervenor City of Oxnard pursuant to a Non-Disclosure Agreement.

LATHAM & WATKINS^{LLP}

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

/s/ Michael Carroll

Michael Carroll
of LATHAM & WATKINS LLP

enclosure

cc: Gary Rubenstein, Sierra Research, Inc.

APPLICATION FOR CONFIDENTIAL DESIGNATION
Puente Power Project 15-AFC-01
Sierra Research, Inc.

Air Quality Data

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

Sierra Research, Inc. ("Sierra Research") is requesting confidential designation for a Microsoft Excel spreadsheet, including but not limited to the proprietary compilation of equations, formulas, and calculations contained therein, used to produce the air quality data and analysis submitted by NRG Oxnard Energy Center, LLC to the CEC staff in proceeding number 15-AFC-01. The spreadsheet was submitted to the CEC on December 2, 2015.

To be clear, the results of the equations, formulas, and calculations contained in the Microsoft Excel spreadsheet are included in the AFC as Appendices C-2, C-5, and C-8. Sierra Research agrees that Appendices C-2, C-5, and C-8 are not subject to confidential treatment. Instead, this request asks that the compilation of equations, formulas, and calculations (i.e., the linkages between spreadsheet cells, comprised of cell formulas) contained in the Microsoft Excel spreadsheet be kept confidential for the reasons set forth herein.

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

Consistent with applicable law, this information should be held confidential indefinitely in order to protect the proprietary and confidential information identified therein as confidential trade secrets as described below. Sierra Research also requests that any CEC staff member who accesses this information sign or confirm that he or she has signed the appropriate non-disclosure agreement prior to accessing this information.

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.*

The Public Records Act exempts "trade secrets" 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." (Govt. Code § 6254.7(d).)

The California Civil Code Section 3426.1(d) defines a "trade secret" as follows:

(d) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

**APPLICATION FOR CONFIDENTIAL DESIGNATION- Sierra Research, Inc.
Puente Power Project, 15-AFC-01**

(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.

The Commission's regulations provide for information to be designated as confidential if it "contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage." (20 CCR § 2505(a)(1)(D).)

The compilation of equations, formulas, and calculations contained in the Microsoft Excel spreadsheet constitute Sierra Research's trade secrets as defined by the California Civil Code, and is thus exempt from disclosure under the Public Records Act. This information qualifies as a trade secret under Section 3426.1(d) of the California Civil Code for the reasons explained below.

First, this information has an independent economic value to Sierra Research, as this information provides the basis for the air quality data and analysis produced by Sierra Research, and has taken substantial time and resources for Sierra Research to develop. Access to this information by others, such as competitors, would allow the user to derive an economic value from disclosure or use, as the user could use the information to produce air quality data and analysis in return for payment, or in lieu of paying Sierra Research for such analysis. Furthermore, disclosure of the information would give such a user a business advantage, as the information would give the user the ability to produce air quality data and analysis using Sierra Research's proprietary methods without the expenditure of time and resources that Sierra Research has invested to develop such a compilation of equations, formulas, and calculations.

Second, this information is subject to efforts to maintain its secrecy: this information has never been released publicly, and is used by and available only to (1) employees of Sierra Research, who are instructed not to publicly disclose this information; or (2) to consultants to Sierra Research who have signed a confidentiality/ nondisclosure agreement with Sierra Research. Furthermore, Sierra Research is providing this information to CEC staff on the condition that it will not be made public or provided to any outside party, or used by anyone at the CEC for personal gain.

This information is also subject to confidential designation under the Commission's regulations, as this information is a trade secret, as described above. Moreover, disclosure of this information would cause a loss of competitive advantage to Sierra Research. Disclosure of Sierra Research's proprietary compilation of equations, formulas, and calculations to the public would allow Sierra Research's competitors and others to review and obtain Sierra Research's proprietary compilation of equations,

**APPLICATION FOR CONFIDENTIAL DESIGNATION- Sierra Research, Inc.
Puente Power Project, 15-AFC-01**

formulas, and calculations for free, rather than for the full monetary value of such information.

4. *State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

Sierra Research considered whether it would be possible to aggregate or mask the information; there is no feasible method, however, of aggregating or masking the information that would not either disclose the information or render the information provided useless. The results of calculations performed using the information has previously been provided to Commission staff in the Portable Document Format (PDF). In this format, the results of the calculations are presented while protecting the proprietary compilation of equations, formulas, and calculations. Sierra Research has no objection to the continued distribution of PDF versions of the results of calculations to the public.

5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

Sierra Research has not disclosed any of the subject information to anyone other than its employees, to consultants who have signed a confidentiality/nondisclosure agreement with Sierra Research, or to government agencies that have agreed to treat the information confidentially as a trade secret.

I certify under penalty of perjury that the information contained in this Application for Confidential Designation is true, correct, and complete to the best of my knowledge and belief. I am authorized to make the Application and Certification on behalf of Sierra Research.

Dated: February 1, 2016

Sierra Research, Inc.

By:



GARY RUBENSTEIN
Senior Partner