

DOCKETED

Docket Number:	97-AFC-01C
Project Title:	High Desert Power Plant (COMPLIANCE)
TN #:	210443
Document Title:	Response Letter to Application for Confidentiality
Description:	Exhibits A, B, C, D, F, and updated Exhibit F - Water Feasibility Study Report
Filer:	Sabrina Savala
Organization:	California Energy Commission
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CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

February 16, 2016

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

**RE: Application for Confidential Designation for Exhibits A, B, C, D, F,
and Updated Exhibit F to the High Desert Power Project 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) *Exhibit A to the High Desert Power Project Recycled Water Feasibility Study Report, November 3, 2014, Cardno-ENTRIX Report – Availability and Use of Recycled Water at the High Desert Power Project;*
- 2) *Exhibit B to the High Desert Power Project Recycled Water Feasibility Study Report, November 3, 2014, B. Kiewit Power Engineers Exhibit – Recycled Water Technical Feasibility Study;*
- 3) *Exhibit C to the High Desert Power Project Recycled Water Feasibility Study Report, November 3, 2014, HDPP Recycled Water Delivery and Use Logs;*
- 4) *Exhibit D to the High Desert Power Project Recycled Water Feasibility Study Report, November 3, 2014, HDPP Report – Recycled Water Economic Analysis; and*
- 5) *Exhibit F (including Updated Exhibit F) to the High Desert Power Project Recycled Water Feasibility Study Report, November 3, 2014, Impact of 100% Recycled Water Use on Facility Operations and Maintenance Costs.*

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 the 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 California Energy Commission. The described information meets the defined exemption under section 6254(e).

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, 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 flourish extending to the right.

Robert P. Oglesby
Executive Director

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