

## DOCKETED

<b>Docket Number:</b>	08-AFC-09C
<b>Project Title:</b>	Palmdale Energy Project (Formerly Palmdale Hybrid Power Plant) - Compliance
<b>TN #:</b>	210592
<b>Document Title:</b>	Response to Application for Confidentiality
<b>Description:</b>	N/A
<b>Filer:</b>	Sabrina Savala
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Energy Commission
<b>Submission Date:</b>	3/2/2016 12:04:34 PM
<b>Docketed Date:</b>	3/2/2016

**CALIFORNIA ENERGY COMMISSION**1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

February 29, 2016

Scott A. Galati  
DayZen, LLC  
2501 Capitol Avenue, Suite 201  
Sacramento, CA 95816

**RE:           Application for Confidential Designation for Palmdale Energy, LLC  
Confidential Emissions Offset Package  
Palmdale Energy Project  
Docket No. 08-AFC-9C**

Dear Mr. Galati:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of Palmdale Energy, LLC (Applicant). The application seeks confidential designation for the *Palmdale Energy, LLC Confidential Emissions Offset Package* (Confidential Record).

The application states that confidentiality is sought for a special compilation of emission reduction credit information compiled by Applicant. Applicant notes that no feasible method of aggregating or masking information in the Confidential Record could be identified and that the Confidential Record has 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, an application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to an 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 Record includes trade secret information—specifically, a special compilation of emission reduction credit information developed by Applicant—which gives Applicant a business advantage over potential competitors who have not compiled such a list; 2) Public disclosure of the trade secret information would hinder current contract negotiations; 3) Applicant uses the trade secret information to negotiate mutually binding contracts for required emission reduction credits; and 4) Applicant employed measures to ensure the Confidential Record was not disclosed outside of Applicant's corporation, including only disclosing the Confidential Record on a "need-to-know" basis to those employed by or working for Applicant, marking the Confidential Record as "Confidential," instituting a policy that the Confidential Record be segregated from other files, and restricting access to the Confidential Record to a designated confidential information manager within Applicant's Corporation or their attorneys/consultants.

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 Confidential Record is being supplied to the California Energy Commission in response to Data Requests issued by California Energy Commission Staff as part of the processing of Applicant's Petition for Amendment to the Commission Decision on the Palmdale Hybrid Power Project.

The application is clear that confidentiality is being sought for trade secret information related to the permitting of a siting project within the state. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the Confidential Record from public disclosure.

Applicant requests that the information be kept confidential until mutually binding contracts for all required emission reduction credits are signed. The trade secret information has value until negotiations over the contracts are completed; therefore, it is appropriate to grant confidentiality until such contracts are signed.

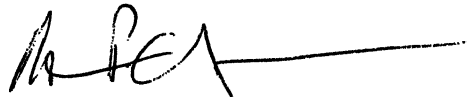
Scott A. Galati  
February 29, 2016  
Page 3

For the reasons stated above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential until the contracts currently under negotiation for all required emission reduction credits are signed.

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 Michelle Chester, Staff Counsel, at [Michelle.Chester@energy.ca.gov](mailto:Michelle.Chester@energy.ca.gov).

Sincerely,

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

Robert P. Oglesby  
Executive Director

cc: Docket Unit  
Eric Veerkamp, Energy Commission Compliance Project Manager  
Nancy Fletcher, Energy Commission Air Quality Staff  
Gerry Bemis, Energy Commission Air Quality Staff