

DOCKETED

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CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

July 18, 2016

Louis Ting
Director of Power Planning and Development
Los Angeles Department of Water and Power
111 North Hope Street, Room 921
Los Angeles, CA 90012

RE: **Application for Confidential Designation for Generator Heat Rates**
Docket No. 11-RPS-01

Dear Mr. Ting:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of Los Angeles Department of Water and Power (Applicant). The application seeks confidential designation for *Confidential Heat Rate Range for LADWP Generating Facilities*, dated June 2, 2016 (Confidential Record).

The application states that confidentiality is sought for heat rate ranges for the Applicant's power generation facilities in the Los Angeles basin (Hanes, Scattergood, and Valley), provided to the Energy Commission for verification of Applicant's Renewable Portfolio Standard (RPS) data submitted for the compliance period from 2011 to 2013 (First Compliance Period). Applicant states that there is no feasible method for aggregating the Confidential Record which would allow for disclosure without serious harm 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 [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, comments b, p.5.)

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an 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 is a key component of calculating energy production data from each generating unit at Applicant's power plants; 2) disclosure of the Confidential Record could reveal information of commercial value which provides Applicant with a business advantage over other utilities who do not know or use the information; 3) the Confidential Record is instrumental in identifying Applicant's costs to produce energy and facilitate energy sales, and Applicant expended substantial time and resources on the design, construction, environmental assessments, and modeling of the range of energy production data during each generating unit's life expectancy; and 4) the Confidential Record is not available to the public or readily available in the market place, and the Confidential Record is only available to Applicant employees involved with energy production on a "need-to-know" basis.

The application is clear that confidentiality is being sought for trade secret information related to verification of Applicant's RPS data to be submitted to the Energy Commission. Therefore, Applicant has made a reasonable claim that the law allows the Energy Commission to keep the Confidential Record from public disclosure.

Applicant requests that the information be kept confidential indefinitely. The trade secret information has value as long as the generating units are in use, because heat rates will not fluctuate unless a unit is completely replaced. The generating units at each power plant have a life expectancy in excess of 30 years. Therefore, it is appropriate to grant confidentiality indefinitely, until the generating units are replaced.

For the reasons stated above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential indefinitely.

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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 (916) 651-2935.

Sincerely,



Robert P. Oglesby
Executive Director

cc: Docket Unit, California Energy Commission
Jennifer Campagna, California Energy Commission, Renewable Energy Division