

DOCKETED

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CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

November 30, 2016

Keven Wedman
2525 Natomas Park Drive, Suite 300
Sacramento CA 95833

**RE: Application for Confidential Designation for Delegate Chief Building
Official Services for the Siting, Transmission and Environmental
Protection (STEP) Division
Docket No. 16-MISC-01**

Dear Mr. Wedman:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of NV5, Inc. The application seeks confidential designation for the following documents (Confidential Records):

- 1) *NV5 Power Plant – Fees Rev. 11-10-2016;*
- 2) *NV5 Budget Huntington Beach Final 9months 11-10-2016;*
- 3) *NV5 MW vs Fee New Projects 11-10-2016;*
- 4) *NV5 Power Plant Valuation 11-10-2016;*
- 5) *NV5 Project Budgets template 11-10-2016;*
- 6) *NV5 Template 11-10-2016; and*
- 7) *NV5 CBSC Building Permit Fees for CEC 11-10-2016.*

The application states that confidentiality is sought for documents containing intellectual and proprietary cost information submitted to the California Energy Commission for the Delegate Chief Building Officer (DCBO) selection process. No feasible method of aggregating or masking the information could be identified, and the application states that the Confidential Records have not been disclosed publicly. Applicant submitted to the Docket a redacted version of the NV5 CBSC Building Permit Fees for CEC 11-10-2016, to allow public access to PowerPoint presentation slides submitted as part of the application that do not contain confidential information.

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 Records contain proprietary cost information submitted to the California Energy Commission for a competitive bid process; 2) public disclosure of such information could provide competitors with access to information of economic value that is otherwise not publicly available; 3) public disclosure of the Confidential Records could jeopardize Applicant's competitive advantage in the competitive bid process; and 4) The Confidential Records are maintained on a password protected company server and only accessible to applicable NV5, Inc. employees.

The application is clear that confidentiality is being sought for trade secret information related to competitive bidding for the DCBO selection process. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the Confidential Records from public disclosure.

Applicant requests that the information be kept confidential for ten years. Upon submission of an application, the California Energy Commission makes an independent determination on designation of confidentiality and the appropriate term. Over time, the cost information contained in the Confidential Records loses its value as a trade secret. Therefore, it is appropriate to grant confidentiality for five years, which represents sufficient time for the Confidential Records to lose their relevance to ongoing business.

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

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,

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, California Energy Commission
Michael Lewis, Siting, Transmission, and Environmental Protection Division
Sara Kim, Staff Counsel