

DOCKETED

Docket Number:	07-AFC-03C
Project Title:	CPV Sentinel
TN #:	217614
Document Title:	DGC Operations, LLC Application for Confidential Designation
Description:	Application for Confidential Designation for Root Cause Analysis - Sentinel Energy Project
Filer:	Eric Janssen
Organization:	Ellison Schneider Harris & Donlan LLP
Submitter Role:	Applicant Representative
Submission Date:	5/16/2017 12:32:56 PM
Docketed Date:	5/16/2017

ELLISON SCHNEIDER HARRIS & DONLAN LLP

ATTORNEYS AT LAW

2600 CAPITOL AVENUE, SUITE 400

SACRAMENTO, CALIFORNIA 95816

TELEPHONE: (916) 447-2166

<http://www.eslawfirm.com>

May 16, 2017

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

Re: Sentinel Energy Project (07-AFC-03C):
Application for Confidential Designation- Root Cause Analysis

Dear Mr. Oglesby:

Pursuant to Sections 2501 *et seq.*, of Title 20 of the California Code of Regulations, DGC Operations, LLC (the "Applicant") hereby submits this *Application for Confidential Designation* for the attached *Root Cause Analysis* on behalf of the Sentinel Energy Project.

Please feel free to contact us at (916) 447-2166 should you have any questions or require additional information. Thank you.

Sincerely,



Brian S. Biering
Samantha G. Neumyer
ELLISON SCHNEIDER HARRIS &
DONLAN LLP
Attorneys for Applicant

APPLICATION FOR CONFIDENTIAL DESIGNATION

Sentinel Energy Project (07-AFC-03C) DGC Operations, LLC (the “Applicant”)

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

The *Root Cause Analysis*, including the accompanying attachments, for the Sentinel Energy Project should be kept confidential in its entirety.

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

The *Root Cause Analysis* should be held confidential for the life of the Sentinel Energy Project in order to protect the information contained therein.

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 *Root Cause Analysis* should be kept confidential for the following reasons.

First, the Public Records Act broadly exempts corporate proprietary information, including trade secrets from public disclosure. (Gov’t Code §§ 6254.7(d), 6254.15.) Trade secrets include “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.” (Gov’t Code §§ 6254.7(d), 6254.15.) 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:

(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 *Root Cause Analysis* contains specific compilations of information related to the specific technologies employed at the Sentinel Energy Project, including as-built drawings, fuel use and consumption information, production data, photographs of the facility, and other commercially valuable information related to the facility’s operations and schematics. Such information constitutes trade secrets as the project owner uses such information for the purposes of electrical generation and derives a business advantage over competitors by virtue of its use. The *Root*

Cause Analysis has independent economic value from not being generally known to the public or to the Applicant's competitors who can obtain economic value from its disclosure or use.

Second, 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 C.C.R. § 2505(a)(1)(D).) Disclosure of the *Root Cause Analysis* could otherwise cause a loss of a competitive advantage to the project owner. The *Root Cause Analysis* outlines issues associated with the generating asset and courses of action by the asset owner, operator and major equipment vendor that are not publicly known, and the disclosure of which would result in a loss of business advantage. Operational procedures documents relating to the Sentinel Energy Project are not made public, and those materials constitute trade secrets. The wholesale generating market in California is extremely competitive, and facility owners limit and control the scope of information made public regarding the configuration, design and status of facilities, their operating and maintenance practices, as well as seeking to avoid public disclosure of personal identifying information regarding employees, many of whom have specialized training and knowledge of market sensitive. Therefore, the *Root Cause Analysis* should be kept confidential.

Third, the Public Records Act unambiguously protects from disclosure "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." (Gov't Code § 6254(c).) The *Root Cause Analysis* contains plant personnel information, including specific information regarding plant operators and staff, job performance, and other information typically contained within personnel and similar files. Disclosure of the information would constitute an unwarranted invasion of personal privacy.

Fourth, due to the facts underlying the preparation of the *Root Cause Analysis*, operational plans, recommended changes to plant operations, specific facility equipment production and fuel use data, and other trade secret information contained therein, the public interest served by non-disclosure clearly outweighs the public interest served by disclosure. Further, release of this information may directly harm the project owner's existing and future commercial opportunities, employee retention and arrangements which are instrumental in maintaining the ongoing operations at the facility. Therefore, the *Root Cause Analysis* should be kept confidential.

Fifth, the *Root Cause Analysis* has been submitted to the California Public Utilities Commission through its process for designation handling of confidential records. Therefore, the Applicant requests that the California Energy Commission similarly treat the *Root Cause Analysis* as a confidential record that should not be publicly disclosed.

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.*

The Applicant considered whether it would be possible to aggregate or mask the information. Given the specific details and circumstances analyzed in the *Root Cause Analysis*, no feasible

method of aggregating or masking the information could be identified at this time that would not either disclose the information or render the information provided useless.

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.*

The Applicant has not disclosed any of the subject information to anyone other than the California Public Utility Commission, the California Department of Industrial Relations Division of Occupational Safety and Health, and the California Energy Commission staff pursuant to requests for confidential treatment and designation, and the Applicant's employees, attorneys and consultants working on behalf of the Sentinel Energy Project. Moreover, this information has not been disclosed to persons employed by, or working for, the Applicant except on a confidential, "need-to-know" basis.

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 this Application and Certification on behalf of the Applicant.

Dated: May 16, 2017

ELLISON SCHNEIDER HARRIS & DONLAN LLP

By:



Brian S. Biering
Samantha G. Neumyer

Attorneys for the Applicant