

DOCKETED

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Document Title:	Sentinel Energy Project Revised Application for Confidential Designation - Root Cause Analysis
Description:	Application is to support the DGC Operations LLC Sentinel Energy Center Root Cause Analysis - REDACTED PUBLIC VERSION
Filer:	Eric Janssen
Organization:	Ellison Schneider Harris & Donlan LLP
Submitter Role:	Applicant Representative
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Brian S. Biering
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September 25, 2017

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

Re: Sentinel Energy Project (07-AFC-03C):
Revised 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 revised, redacted *Application for Confidential Designation* for the attached *Root Cause Analysis* on behalf of the Sentinel Energy Project. On May 16, 2017, DGC Operations, LLC provided a confidential application seeking to protect the RCA as a whole. Based on feedback from CEC counsel, we are filing a redacted version of the RCA and updated confidentiality application.

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 following specific elements of the attached *Redacted Root Cause Analysis* for the Sentinel Energy Project should be kept confidential:

- Complete or partial names of personnel (including initializations) throughout the Redacted RCA;
- Sentinel Energy Project’s LockOut / TagOut (“LOTO”) Procedure SMP-3 documentation in its entirety as included in Attachment 3 of the Redacted RCA;
- Photos of multi-point calibration checks as included in Attachment 6;
- As-built drawings in Attachment 7;
- Control screen shots as included in Attachment 8.

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

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

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 redacted portions of the *Redacted 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, photographs of the facility, LOTO Procedure SMP-3 documentation, 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. Specifically, the LOTO procedure itself (Attachment 3) was prepared at considerable expense to DGC Operations, LLC and is not commonly known. Its disclosure would allow competitors to simply use DGC Operations, LLC's procedures and avoid the expense of their preparation, creating a competitive advantage over DGC Operations, LLC. 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. Similarly, Attachment 6 contains plant-specific information concerning the multi-point calibration check, which is a procedure specific to the Sentinel Energy Project conducted by Diamond. This plant-specific information could give our competitors an advantage because they did not incur the expense in developing this procedure. Attachment 7 has been redacted because the as-built drawings of the proprietary design of the Sentinel Energy Project were prepared at considerable expense to Diamond and could be used by competitors to obtain an advantage over DGC Operations, LLC. Similarly, the Control Screens and trend data were also prepared at considerable expense to Diamond and could be used by a competitor to obtain an advantage over DGC Operations, LLC.

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).) 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 market sensitive knowledge. Therefore, specific elements of 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 redacted portions of 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 redacted portions of 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 disclose the redacted information.

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: September 25, 2017

ELLISON SCHNEIDER HARRIS & DONLAN LLP

By:



Brian S. Biering
Samantha G. Neumyer

Attorneys for the Applicant