

CALIFORNIA ENERGY COMMISSION

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(916) 654-4996

November 6, 2001

Scott A. Galati
Grattan & Galati
Counsel for Midway Power, LLC
Renaissance Tower
801 K Street
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Sacramento, CA 95814

DOCKET	
01-AFC-21	
DATE	NOV 06 2001
RECD.	NOV 07 2001

RE: Cultural and Paleontological Resources Reports,
Applications for Confidentiality,
Tesla Power Project, Docket No. 01-AFC-21

Dear Mr. Galati:

As part of your Application for Certification for the Tesla Power Project, Docket No. 01-AFC-21, you submitted Appendices O and L-3, Paleontological and Cultural Resources Technical Reports, together with two applications for confidentiality, docketed October 15, 2001. The applications requested permanent non-disclosure of Appendices O and L-3.

Your applications contain Public Records Act legal citations and state:

The public interest would be served by nondisclosure by preventing looting of the cultural resource sites described in Appendix L-3. Such looting would preclude scientific study of the sites to gain historical data about human use of the area.

A properly filed application for confidentiality shall be granted under the Energy Commission's regulations, Title 20, California Code of Regulations, section 2505(a)(3)(A), "unless the applicant has failed to make any reasonable claim that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential."

The California Public Records Act recognizes the confidentiality principles of Federal law (Govt. Code, § 6254(k)). The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations must be kept confidential in order to preserve them (16 U.S.C. § 470hh). Nondisclosure of cultural and paleontological resource site location data, such as that you have submitted in Appendices O and L-3, is expressly in the public interest.

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Tesla Power Project's October 15, 2001 confidentiality applications are therefore granted in their entirety. Appendix O and Appendix L-3 of the Tesla AFC will be kept confidential for an indefinite period.

Any subsequent submittals of additional cultural/paleontological resources data can be deemed confidential without the need for a new application under sections 2505(a)(1)(G) and 2505(a)(4) of the Energy Commission's regulations, if you file a certification under penalty of perjury that the new information is substantially similar to that which is granted confidential status by this determination.

Persons may petition to inspect or copy those records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the Energy Commission's regulations at Title 20, California Code of Regulations, section 2506.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Larson", written in a cursive style.

STEVE LARSON
Executive Director