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April 10, 2023

Via Email

McGregor Stadtmiller
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**Application for Confidential Designation for 2022 Annual Mass Emissions Report,
Docket No. 01-AFC-05C**

Dear McGregor Stadtmiller:

The California Energy Commission (CEC) has received the Valero Benicia Refinery's (applicant) applications for confidential designation (TN 249026, TN 249540), dated February 28, 2023,¹ and April 4, 2023, covering the following documents in the 2022 *Annual Mass Emissions Report* under CEC Condition of Certification AQ-22:

Section 1: Mass Emissions and Fuel Summary (Heat Input Rate monthly averages).

Section 6: Fuel Gas Sulfur Content Report.

The application states that the monthly averages in Section 1 and the daily fuel use data in Section 6 should be kept confidential because the data contains proprietary business trade secrets.

Confidentiality Claims

Proprietary Business Information and Trade Secrets

An application for confidential designation 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 Commission to keep the record confidential." The executive director's determination made in response to an application for confidential designation is subject to a reasonable standard. The applicant must make a reasonable claim for confidentiality based on the California Public Records Act and other applicable laws.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705(k), 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

Civil Code section 3426.1(d) defines "trade secret" as:

¹ This response letter supersedes the prior response letter (TN 249443).

[I]nformation, 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.

(Civ. Code, § 3426.1(d); see also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

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, the application shall state: (1) the specific nature of the advantage, (2) how the advantage would be lost, (3) the value of the information to the applicant, and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Discussion

Application TN 249026:

The application addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) by stating:

- 1) *The specific nature of the advantage* – The information is indicative of firing rates and design capacity of the cogeneration unit, which could be used by competitors or vendors at any point in time to Valero’s detriment.
- 2) *How the advantage would be lost* – Disclosure of this information to the public would result in an unfair competitive disadvantage to the Valero Benicia Refinery.
- 3) *The value of the information to the applicant* – No specific dollar amount, but the information contains fuel use information that is required as part of the quarterly submittal required by the Bay Area Air Quality Management District (BAAQMD) and is indicative of firing rates and design capacity of the cogeneration unit.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information is only shared with the BAAQMD, CEC, and in part with the City of Benicia Public Library.

The applicant has made a reasonable claim that the redacted data in Section 1 - Mass Emissions and Fuel Use Summary (Heat Input Rate, page 5 and MMBtu/hr., page 18); and Section 6 - Fuel Gas Sulfur Content Report, Fourth Quarter 2022 Report (Maximum Daily Average Fuel Consumption, page 44 and Fuel Consumption of Gas Turbine and HRSG, pages 45 through 46) are exempt from disclosure as business proprietary or trade secrets.

The cover letter to the *2022 Annual Mass Emissions Report* indicates that the letter and report were sent to the Bay Area Air Quality Management District and to CEC program staff as part of Valero’s regulatory obligations. The letter also indicates that the report was sent to the City of Benicia Public Library. The CEC staff confirmed with library staff that the letter and report were received. Library staff indicates that data on pages 1 and 14 of Section 1 and pages 2, 3, and 4 of Section 6 have been redacted. These are the only redactions to the report received by the City of Benicia Public Library.

California Code of Regulations, title 20, section 2505(a)(6) states in part that “once a record has been released to the public, the record can no longer be deemed confidential.” The remaining portions of the *2022 Annual Mass Emission Report* appear to have been publicly released to the library.

Therefore, the redacted data in Section 1 - Mass Emissions and Fuel Use Summary (Heat Input Rate, page 5 and MMBtu/hr., page 18); and Section 6 - Fuel Gas Sulfur Content Report, Fourth Quarter 2022 Report (Maximum Daily Average Fuel Consumption, page 44 and Fuel Consumption of Gas Turbine and HRSG, pages 45 through 46) are granted confidentiality. The remainder of the report is not confidential.

The portions referenced above are confidential for a period of five years, consistent with the confidentiality period granted to Valero Benicia Refinery’s quarterly fuel reports.

Executive Director’s Determination

For the reasons stated, the application for confidential designation is granted for the referenced data in Section 1 (pages 5 and 18); and Section 6 (pages 44 through 46) of the *2022 Annual Mass Emissions Report*.

Confidentiality is denied for the remaining portions of the report.

You may request that the CEC determine the confidentiality of records that the executive director denied confidential designation. You have 14 days to request that the CEC determine the confidentiality of the record. If you make such a request, the CEC will conduct a proceeding according to the provisions in the California Code of Regulations, title 20, section 2508.

If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director