

DOCKETED

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September 11, 2023

Via Email

McGregor Stadtmiller
Taryn Wier
Valero Benicia Refinery
3400 East 2nd Street
Benicia, California 94510
McGregor.Stadtmiller@valero.com

**Application for Confidential Designation for the 2023 Q2 Fuel Gas Sulfur Report
Docket No. 01-AFC-05C**

Dear McGregor Stadtmiller:

The California Energy Commission (CEC) has received the Valero Benicia Refinery's (applicant) application for confidential designation (TN 251698), docketed August 21, 2023, covering the 2023 Quarter 2 Fuel Gas Sulfur Report (Report).

The application asserts that the information contained in the Report, including the hours firing natural gas, hours firing process gas, maximum daily average fuel consumption, and fuel consumption should be kept confidential indefinitely because the data contains proprietary business trade secrets.

Confidentiality Claims

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 reasonableness 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:

[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

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 Report contains information on the firing rates and design capacity of the cogeneration unit and is required as part of the applicant's quarterly submittal to the Bay Area Air Quality Management District (BAAQMD).
2. *How the advantage would be lost* – Disclosure of the information may be used by competitors or vendors at any point in time to the applicant's detriment.
3. *The value of the information to the applicant* – Public release of the information would result in unfair competitive disadvantage to the applicant.
4. *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – This information cannot be aggregated and is currently kept confidential by the applicant on secured servers and in a secure location at the Valero Benicia Refinery. The applicant states that this information is only shared with the BAAQMD through required quarterly submittals.

The applicant has made a reasonable showing that the information contained in the Report should be maintained as confidential as proprietary business information or trade secrets. The data is related to the firing rates and design capacity of the cogeneration unit, contains information that is not public, and has the potential for economic advantage.

Executive Director's Determination

For the reasons stated, the applicant's request for confidential designation for the Report is granted. The Report will be kept confidential for a period of five years, consistent with the confidentiality period granted to Valero Benicia Refinery's quarterly fuel reports.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan
Executive Director