

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

July 18, 2007

Mr. Ryan L. Flynn
PacifiCorp
825 NE Multnomah Street, Suite 1800
Portland, OR 97232

DOCKET	
03-RPS-1078	
DATE	JUL 18 2007
RECD.	JUL 18 2007

RE: **Application for Confidentiality,
RPS Track Form Submissions,
Docket No. 03-RPS-1078**

Dear Mr. Flynn:

On June 4, 2007, PacifiCorp filed an application for confidentiality in the above-captioned Docket. The application seeks confidentiality for information contained in the 2006 California Energy Commission RPS Track Form and the RPS Generation Form relating to monthly generation output information for 2001 through 2006. Specifically, PacifiCorp is seeking confidentiality for the following:

PacifiCorp requests that the forms for which it requests confidential designation herein be kept confidential indefinitely. PacifiCorp believes that indefinite confidential treatment of monthly generation output is required to ensure that facility data does not reveal PacifiCorp's ongoing and future generation output and strategies, which would enable other market participants to "game" PacifiCorp's load and resource requirements and compromise PacifiCorp's ability to secure the most favorable economics for customers.

A properly filed application for confidentiality 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 [Energy] Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1040.) The California courts have traditionally used the following definition of trade secret:

a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

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PacifiCorp's June 4, 2007, confidentiality application does not make a reasonable claim to grant confidentiality to the data identified above since it does not rise to the level of a trade secret. (Gov. Code, § 6254 (k).) The information contained on the 2006 RPS Track Form is an aggregation of data that cannot be reverse engineered to reveal confidential information. Moreover, information contained on the 2006 RPS Generation Form is information publicly available from the Energy Information Administration. Accordingly, the data identified above is denied confidentiality.

An appeal of my decision to grant confidentiality must be filed within fourteen days from the date of this decision. The procedures and criteria for appealing any part of this decision are set forth in the California Code of Regulations, title 20, section 2505. If you have any questions concerning this matter, please contact Fernando De Leon, Senior Staff Counsel, at (916) 654-4873.

Sincerely,

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal tail stroke extending to the right.

B. B. BLEVINS
Executive Director

cc: Docket Unit
Energy Commission Project Manager