

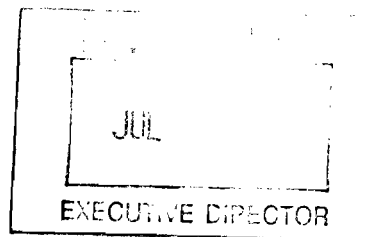
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July 17, 2008



Ms. Melissa Jones
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Appeal of Praxair Plainfield, Inc. Regarding Application for Confidentiality, RPS Track Form Submission, Docket No. 03-RPS-1078

Dear Ms. Jones:

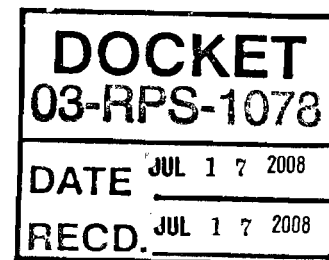
Praxair Plainfield, Inc. ("Plainfield") is in receipt of your letter dated July 3, 2008¹ regarding our May 19, 2008 application for confidentiality in the above-cited docket.

The data types and duration of confidentiality requested in Plainfield's application, page 1 section 2, are summarized as follows:

Report	Information	Duration
CEC Report on Procurement of Renewable Energy Generation from RPS Certified Facilities (2007Track Report)	a. Schedule 1, Columns C and N; Schedule 2, Columns C and R, and, Cell H29	For a period of at least one (1) from the last month covered in the reports;
	b. Schedule 1: all facility identifying details; and, Schedule 2: all facility identifying details and monthly procurement details	For a period of at least four (4) years from the time of production
	c. Schedule 2, Cell A29	For a period of at least five (5) years from the time of production.

Plainfield wishes to thank you for granting the item "b" from its original request. However, Plainfield must submit this appeal because the denial of protection for the other parts of our data, namely the information in Schedule 1, Columns C and N, and in Schedule 2, Columns C and R and Row 29 (i.e., cells A29 and H29), will result in impermissible disclosure of Plainfield's trade secret information *and more critically disclosure of Schedule 2, Cell A29 will result in disclosure of*

¹ Although your letter is dated July 3, 2008, it was not received in Plainfield's counsel's Sacramento office until July 15, 2008. Because of the pending expiration of the time period provided for appeals under the Commission's Rules, Plainfield has not had the opportunity it would have liked to discuss its concerns with your staff. If, upon review of the information contained herein, additional questions arise about the nature of the data and the potential harms described in this appeal, Plainfield would appreciate the opportunity to discuss the issues with you or your staff.



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customer-specific trade secret data which will harm both Plainfield and its customer. Therefore, for the reasons detailed below, Plainfield respectfully requests reconsideration of your July 3, 2008 letter.

At page 2 you discuss the grant and denial of protection for certain portions of Plainfield's information:

Praxair's confidentiality assertions are reasonable to the extent that individual renewable facility identification information contained in RPS-Track Schedules 1 & 2 (Facility Name, Unit Number, and CEC RPS Certification Number) would provide competitors with information that could harm Praxair economically. Therefore, all facility identifying details in Schedule 1 and facility identifying details (columns A, B, and D) and monthly procurement details in Schedule 2 is granted confidentiality until December 31, 2011. In addition, Schedule 1 column N and Schedule 2 column R (annual generation procured and annual KWh procured, respectively) are granted confidentiality per individual facility until December 31, 2011.

However, Praxair's May 19, 2008, confidentiality application does not make a reasonable claim to grant confidentiality to the aggregated data identified in Schedule 1 column N, the aggregated data identified in Schedule 2 column R, or the information in cell A29 and cell H29 since this information would not harm Praxair if publicly disclosed or could it be reverse engineered to somehow reveal confidential information. Specifically, the information contained in Schedule 1, column N constitutes aggregated annual generation procured, and the information contained in Schedule 2, column R contains total annual procurement in KWh. Moreover, cell A29 is total annual retail sales, and Cell H29 is the total certified renewable procured. Consequently, this information is denied a designation of confidentiality since the Energy Commission has determined that this information does not rise to level of a trade secret and that similar data is already publicly available. (Gov. Code, § 6254 (k).) (Emphasis added.)

Plainfield disagrees with your findings and conclusions regarding the trade secret status of this information and its public availability. The passages require clarification with respect to the treatment of Schedule 1, column N and Schedule 2, column R insofar as the first paragraph grants the requested confidentiality but the second paragraph denies the protection of "aggregated data", although the letter fails to describe what is meant by "aggregated data." Therefore, to preserve its

rights under 20 CCR § 2505(a)(3)(B), Plainfield submits this appeal and respectfully requests your reconsideration of our request.

One of Plainfield's primary concerns is the disclosure of *customer-specific trade secret* information as well as Plainfield's own trade secret information. Plainfield's customer operates in an extremely competitive industry. Disclosure of the information at issue here, coupled with other data disclosed in other regulatory contexts, would provide the customer's competitors with very detailed and timely trade secret consumption data that is not otherwise public, thereby harming the customer due to loss of competitive advantage.² Plainfield does not believe any of this data at issue—namely calendar year 2007—is publicly available. Moreover, while some of this data might be considered "aggregated" as that term is used in 20 CCR § 2503(b)(9) because certain of the data represents the sum of more detailed data found in the form, *none of that Plainfield-specific data has been aggregated with any other LSEs, thus providing none of the protection typically assumed when the Commission "aggregates" data to mask the underlying identity of the sources. Accordingly, all of the so-called "aggregated" data remains trade secret data, the disclosure of which will result in the loss of competitive advantage to both Plainfield and its customer.*

Although more aggregated than the underlying detailed data provided in the form, each of these identified elements are considered by Plainfield to constitute trade secret data with significant commercial value. Accordingly, Plainfield believes the protection provided in the first cited paragraph reaches the correct result and should be extended to that same data if summed into a total annual procurement figure. Disclosure of that information would provide our retail service provider competitors with competitively sensitive information regarding Plainfield's present market position (i.e., data in Schedule 2, Cell A29) that is not otherwise available. This information could then be used with other data to determine Plainfield's allocation of certain resources based on market share as well as to determine Plainfield's RPS compliance status and future procurement needs. Potential RPS suppliers would benefit from Plainfield's loss of competitive advantage by gaining insight into Plainfield's immediate RPS procurement needs in terms of determining whether Plainfield is long or short on RPS resources (Schedule 2, Cell H29 or Column R or Schedule 1, Column N). Disclosure of this information prior to the period requested in the application would result in a loss of competitive advantage for Plainfield by providing those entities access to valuable information about the presence or absence of existing commercial relationships, Plainfield's specific percentage share of certain resources allocated based on load share, or Plainfield's regulatory compliance status that these entities would not otherwise have. Access to 2007 data provides direct insight into 2008 RPS procurement requirements, and causes the loss of Plainfield's ability to secure or maintain favorable commercial transactions. Such an outcome would obviously harm Plainfield, but it would also hurt Plainfield's customer and undermine the market-based structure that allows Plainfield to

² For obvious reasons Plainfield must be very careful in describing the nature of the harm to its customer in public documents to avoid inadvertent disclosure of its customer's trade secret information or the manner in which other parties may discern that data. It is critical for Plainfield to avoid assisting its customer's competitors with piecing together various bits of information from multiple forums. Plainfield, and its customer, are willing to describe the specific concerns on a confidential basis.

pursue lower priced power for its consumer. For these reasons Plainfield disputes the determination that the data at issue are not trade secrets.

Furthermore, Plainfield disputes the letter's claim that "similar information" is publicly available. Plainfield and its customer are unaware of any instances where the data at issue here—namely the 2007 RPS procurement and retail sales figures specific to Plainfield's loads—are publicly available. Whether or not any other LSE has permitted disclosure of data concerning that LSE's 2007 RPS procurement activities, or the acquiescence by other LSE's in such disclosures, or other entities' failure to assert data confidentiality in no manner precludes Plainfield and its customer from asserting their respective rights to secure protection of their individual trade secret data. Accordingly, Plainfield disputes whether the existence of publicly available "similar data" is germane to the determination that Plainfield's submitted data should be granted confidentiality. Plainfield is cognizant that the Commission seeks to balance interests favoring public disclosure with the legitimate protection of commercially sensitive, trade secret data. However, for the reasons described herein, Plainfield's situation is not similar to other LSEs.

Plainfield's requested confidentiality duration periods noted above were deliberately designed to (1) protect the customer-specific data for a reasonable period until such time as that specific data would lose its commercial value; and (2) for the RPS procurement-related data, mirror the duration of protection afforded all ESP RPS procurement data under rules established by the California Public Utilities Commission ("CPUC"). For the reasons previously discussed, the rejection of Plainfield's request will directly harm Plainfield's customer as well as Plainfield itself. The rejection of the requested duration also causes a conflict between the energy agencies' practices in this area, an outcome that does not serve the public's interest in administrative consistency and simplicity. Moreover, what the Commission arguably gains from its position here—a relatively modest additional period of public disclosure—does not justify the inconsistency and attendant difficulties and expense associated with protecting trade secret data.

The California Public Records Act exempts "trade secrets" from public disclosure, including "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." (Govt. Code § 6254.7(d).) As applied to this circumstance, Plainfield's requested duration for the types of trade secret data is appropriate under this legal framework for the following reasons:

- (1) Total Annual Retail Sales in 2007 (Schedule 2, Cell A29):
 - a. This data reflects customer-specific trade secret data that should not be disclosed due to harm that will befall the customer.³

³ As noted in footnote 2, Plainfield and its customer would be happy to discuss the specifics of this concern in confidence with staff but is reticent to detail the manifestation of harm in public documents.

- b. Plainfield's competitors could not otherwise discern, duplicate or develop this information on their own. Moreover, as explained throughout this request for reconsideration, Plainfield places a high value on maintaining the confidentiality of information concerning its retail sales, market share and means and the methods of providing services. Because the data at issue here is not otherwise public at this point in time, its disclosure would harm Plainfield due to the loss of competitive advantage. Plainfield's original application was intended to convey these facts and positions pursuant to 20 CCR § 2505(a)(1)(D).
- c. This annual retail sales number is a commercially sensitive trade secret value that reflects Plainfield's most recent calendar year 2007 retail market share data, information that is not otherwise available to Plainfield's retail competitors, including other ESPs. The sensitivity of this data is elevated due to Plainfield's limited customer base and the suspension of direct access, which has created a limited universe of contestable customers and relatively little variability in load shares as between the ESPs. Disclosure of this information would result in a loss of competitive advantage insofar as there is no other potential source for this type of contemporaneous information.
- d. RPS suppliers could use the release of this sensitive data to much more accurately determine Plainfield's present-day RPS compliance status and the magnitude of its future RPS procurement requirements needs. Because in other public reports Plainfield's RPS procurement percentage is released (but not the current year's retail sales figure), disclosing the retail sales figure would permit competitors or potential suppliers to accurately estimate Plainfield's present-day RPS procurement needs, resulting in a loss of competitive advantage and bargaining power.
- e. If the Commission were to grant the duration of confidentiality originally requested by Plainfield, it would maintain the same degree and duration of confidentiality provided to the same type of data by the CPUC, which is under the same overarching legal obligation to comply with the California Public Records Act. However, denying Plainfield's requested duration for confidentiality would deny Plainfield the protection the CPUC provides, creating inter-agency conflict and more confusion among market participants about the degree of protection afforded to market sensitive, trade secret data.
- f. This information constitutes a "compilation of information", otherwise known only to Plainfield, which is used in its business and the provision of services and which gives it an opportunity to obtain an advantage over competitors, and the disclosure of which would cause Plainfield a loss of competitive advantage.

- (2) Annual Generation Procurement (Schedule 1, Column “N” and Schedule 2, Column “R”)
- a. Disclosure of the information called for in Schedule 1, Column N and Schedule 2, Column R would disclose (i) the total quantity (or absence) of RPS eligible procurement undertaken in the prior year; (ii) the number of counterparty suppliers and/or RPS eligible resources in the portfolio and (iii) the relative magnitudes as between different resources and/or suppliers.
 - b. The information called for in these portions of the form—the relative contributions to Plainfield’s RPS portfolio—is commercially sensitive trade secret information that reflects Plainfield’s most recent RPS procurement efforts and nature of its portfolio. Plainfield seeks to maintain the confidence of this information so that it is not otherwise available to Plainfield’s retail competitors, including other ESPs, or to its potential RPS-eligible suppliers. Plainfield believes that the sensitivity of this data is elevated due to the relatively limited universe of RPS suppliers with presently operating projects not already tied up under long-term contracts with the large IOUs or municipal entities, the high level of demand for such resources, and the regulatory uncertainty about the reopening of direct access.
 - c. Plainfield -specific information concerning the presence or absence of specific resources, resource types and relative contributions constitutes a “compilation of information” which Plainfield uses in its business, which is not known by others, and the disclosure of which would result in loss of competitive advantage. The loss of competitive advantage is particularly acute as this information can be used in conjunction with other information regarding Plainfield’s commercial activities and status of its current portfolio to provide contemporaneous data about current procurement needs, shares of allocated resources, and existing commercial relationships. As such, the information constitutes trade secret information pursuant to Gov’t Code § 6254.7(d).
- (3) Total Certified Renewables Procured (Schedule 2, Cell H29):
- a. This data is not presently public and its disclosure would permit competitors or potential suppliers to determine the level of Plainfield’s current RPS compliance status, and, in turn Plainfield’s 2008 and onward RPS procurement requirements—particularly sensitive trade secret data. Accordingly, disclosure would result in loss of competitive advantage, and would place Plainfield at a competitive *disadvantage* in procuring for its current-year RPS needs.
 - b. The duration of the confidentiality period originally requested by Plainfield strikes a reasonable balance between Plainfield’s legitimate commercial concerns and need to protect trade secret data and the public’s interest in timely data regarding RPS

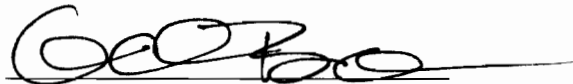
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compliance by various LSEs. Because this information is not presently available, and because granting the modest period of confidentiality would align the protection afforded at the other agency overseeing Plainfield's RPS procurement practices, it is in the public interest to avoid premature disclosure of this data.

- c. This information, particularly when used in conjunction with other information at issue here regarding Plainfield's commercial activities and status of its current RPS portfolio, constitutes a "compilation of information", otherwise known only to Plainfield, which is used in its business and the provision of services and which gives it an opportunity to obtain an advantage over competitors. The disclosure of this information would cause Plainfield a loss of competitive advantage. As such, the information constitutes trade secret information pursuant to Gov't Code § 6254.7(d).

In conclusion, Plainfield respectfully requests that you reconsider the denial of confidentiality protection of the data specified herein for the duration originally requested by Plainfield and issue an amended decision. For the reasons set forth above, reconsideration is appropriate because (1) certain data constitutes *customer-specific trade secret data*; (2) the Plainfield information presently constitutes trade secret data and (3) with respect to the Plainfield data, the very limited duration of the protection requested strikes the appropriate balance between protection of Plainfield's legitimate trade secrets and the public's use of detailed, LSE-specific data consistent with the Public Records Act. Moreover, granting the protection originally requested would avoid an inter-agency policy conflict as to the appropriate scope and limited duration of protection for these types of data.

Respectfully submitted,



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