

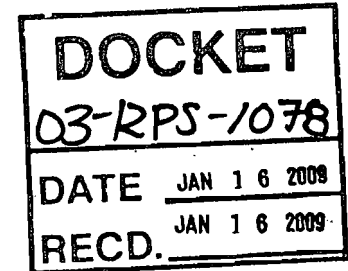
CALIFORNIA ENERGY COMMISSION

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SACRAMENTO, CA 95814-5512
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January 16, 2009

Andrew B. Brown, Esq.
Ellison, Schneider & Harris, L.L.P.
2600 Capital Avenue, Suite 400
Sacramento, CA 95816-5905



RE: Appeal of Praxair Plainfield, Inc.
Application for Confidential Designation of RPS Track Form Submission
Docket No. 03-RPS-1078

Dear Mr. Brown:

This letter responds to your appeal of July 17, 2008, which was submitted on behalf of Praxair Plainfield, Inc. (Praxair) and requests that the California Energy Commission (Energy Commission) reconsider Praxair's request for confidential designation of various data included in Praxair's CEC-RPS-Track Form submission. Praxair submitted its CEC-RPS-Track Form and original request for confidential designation on May 19, 2008. On July 3, 2008, I issued a determination pursuant to California Code of Regulations, title 20, section 2505, granting in part and denying in part Praxair's request for confidential destination.

Table 1, enclosed, identifies the CEC-RPS-Track Form data for which Praxair requested confidential designation, the period of confidential designation requested by Praxair, and the period of confidential designation granted in the Energy Commission's determination. Your appeal challenges the denial of confidential designation of the Praxair data provided in Schedule 1, Column N, and Schedule 2, Column R and Cells A29 and H29, of the CEC-RPS-Track Form submission. Column N and R identify the annual generation by facility procured by Praxair in 2007 and Cells A29 and H29 identify Praxair's total annual retail sales in 2007 and total certified renewable energy procured in 2007, respectively. Praxair's original request for confidential designation requested the data in Columns N and R and Cell H29 be kept confidential through December 31, 2008 and the data in Cell A29 be kept confidential through May 1, 2013.

I understand that you have had various discussions with Energy Commission staff concerning the basis of your appeal and Praxair's original request for confidential designation. Based on those discussions, as well as additional information supplied by Praxair, Energy Commission staff now concur that the data provided by Praxair in Schedule 1, Column N, and Schedule 2, Column R and Cells A29 and H29, of the CEC-RPS-Track Form should be designated confidential and protected as trade secret in accordance with Government Code section 6254 (k).

The July 3, 2008 determination rejected Praxair's claim that the data in Columns N and R was protectable as trade secret, because Energy Commission staff believed that this data constituted aggregated annual procurement data and as such was publicly available and could be disclosed without harming Praxair. Energy Commission staff has since confirmed that this data was not publicly available prior to December 31, 2008, from the Energy Information Administration of U.S. Department of Energy, the California Public Utilities Commission (CPUC), or other private or governmental sources. Moreover, the data in Columns N and R could not be aggregated with the data from other retail sellers and publicly disclosed in a meaningful manner for purposes of verifying RPS procurement without disclosing Praxair's specific data and potentially harming Praxair and placing it at a competitive disadvantage with other retail sellers or competitors.

Similarly, the data in Cell H29 was not publicly available prior to December 31, 2008, and could not be aggregated with the data from other retail sellers and publicly disclosed in a meaningful manner without disclosing Praxair's specific data and potentially harming Praxair and placing it at a competitive disadvantage with other retail sellers or competitors.

It does not appear that the data in Cell A29 will be publicly available anytime soon, if at all. The additional information Praxair provided indicates that the disclosure of this data could harm Praxair by allowing its competitors to use this data (along with other data that is publicly available) to determine the production cost of Praxair's gas products. In addition, Praxair has only one retail customer, so disclosing the data in Cell A29 would disclose its customer's electricity usage.

For these reasons I am revising the July 3, 2008, determination to grant Praxair's request for confidential designation of the data supplied in Schedule 1, Column N, and Schedule 2, Column R and Cells A29 and H29, of the CEC-RPS-Track Form. Praxair has demonstrated that this data is trade secret in accordance with Government Code section 6254 (k) and entitled to protection. The data supplied in Columns N and R and Cell H29 are designated confidential through December 31, 2008, as requested by Praxair. The data supplied in Cell A29 is designated confidential through December 31, 2011, consistent with the designation granted in the July 3rd determination for the data in Schedule 1, Columns A, B and D, and Schedule 2, Columns A, B, and D – Q, of the CEC-RPS Track Form.

In addition, in reviewing Praxair's original request for confidential designation, Energy Commission staff discovered that the Energy Commission's July 3, 2008, determination inadvertently granted a longer period of confidential designation than had been requested or justified by Praxair for certain data. Consequently, Energy Commission staff recommends that the period of confidential designation be revised for the Praxair data provided in Schedule 1, Column N, and Schedule 2, Column R, of the CEC-RPS-Track Form. I understand that Energy Commission staff has discussed this with you and that you and your client accept these revisions. I further understand that Praxair

Andrew B. Brown, Esq.
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has agreed to withdraw its July 17, 2008, appeal based on the revised determination as provided herein.

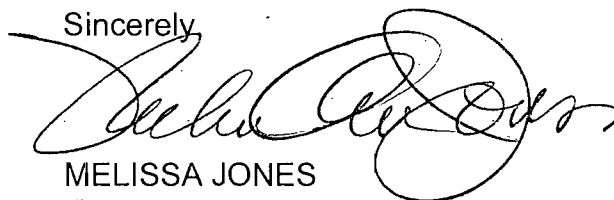
Table 2, enclosed, shows the revised period of confidential designation for each data included in Praxair's CEC-RPS-Track Form submission. The Praxair data may be publicly disclosed by the Energy Commission after the corresponding period of confidential designation has lapsed. In addition, if any of Praxair's data is publicly disclosed by Praxair or otherwise becomes publicly available before the corresponding period of confidential designation lapses, that data may be publicly disclosed by the Energy Commission.

Also, I am informed that Praxair requested and was granted confidentiality by the CPUC for some of the same data included in Praxair's CEC-RPS-Track Form submission. These data were submitted to the CPUC as part of Praxair's RPS compliance filings. Praxair's request was addressed by the CPUC in an Administrative Law Judge ruling issued on August 12, 2008. The ruling granted Praxair's request to treat as confidential various RPS-related data, including Praxair's actual and forecasted procurement data. Unfortunately, neither Praxair's request nor the ruling state how long the Praxair data should or will be kept confidential by the CPUC. If this issue is addressed in a subsequent CPUC ruling, and the CPUC limits confidentiality to a period of time that is shorter in duration than the period of confidential designation granted by this revised determination, the Energy Commission will revise the period of confidential designation accordingly.

Please be aware that individuals may petition the Energy Commission to inspect or copy any records that have been designated confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

If you have any questions concerning the revised determination of confidential designation, please call or email Gabriel Herrera of the Energy Commission Legal Office at (916) 654-5141 or gherrera@energy.state.ca.us.

Sincerely,



MELISSA JONES
Executive Director

Enclosures

cc: Docket Unit
Gina Barkalow, Efficiency and Renewables Division

Table 1

Praxair Plainfield, Inc. Application for CEC Confidential Designation Requested vs. Granted Confidential Designation

CEC-RPS-Track Form (2007 Data)
Schedule 1

		Confidential Designation	
		<u>Period of Nondisclosure</u>	
<u>Form Data</u>	<u>Data Type</u>	<u>Requested</u>	<u>Granted</u>
Column A	Facility Name	4 years (5/1/12)	12/31/11
Column B	Facility Unit #	5/1/12	12/31/11
Column C	Facility Fuel Type	1 year (12/31/08)	*
Column D	Facility CEC RPS Certification #	5/1/12	12/31/11
Column N	Facility Annual Gen. Procured	12/31/08	12/31/11**

Schedule 2

Column A	Facility Name	5/1/12	12/31/11
Column B	Facility Unit #	5/1/12	12/31/11
Column C	Facility Fuel Type	12/31/08	*
Column D	Facility CEC RPS Certification #	5/1/12	12/31/11
Column E	Method for line losses	5/1/12	*
Column F – Q	Monthly Procurement from Facility (January – December 2007)	5/1/12	12/31/11
Column R	Annual Procurement from Facility	12/31/08	12/31/11**
Cell A 29	Total Annual Retail Sales 2007	5/1/13	Denied ***
Cell H 29	Total Certified Renewables Procured	12/31/08	Denied***

* Not addressed in CEC's 7/3/08 determination of confidential designation.

** Granted on a facility-specific basis, but not for all facilities in the aggregate.

*** Denial of confidential designation appealed 7/17/08.

Table 2

Praxair Plainfield, Inc. Application for CEC Confidential Designation Requested vs. Granted Confidential Designation

CEC-RPS-Track Form (2007 Data)

Schedule 1

		Confidential Designation Period of Nondisclosure	
<u>Form Data</u>	<u>Data Type</u>	<u>Requested</u>	<u>Granted</u>
Column A	Facility Name	4 years (5/1/12)	12/31/11
Column B	Facility Unit #	5/1/12	12/31/11
Column C	Facility Fuel Type	1 year (12/31/08)	12/31/08
Column D	Facility CEC RPS Certification #	5/1/12	12/31/11
Column N	Facility Annual Gen. Procured	12/31/08	12/31/08*

Schedule 2

Column A	Facility Name	5/1/12	12/31/11
Column B	Facility Unit #	5/1/12	12/31/11
Column C	Facility Fuel Type	12/31/08	12/31/08
Column D	Facility CEC RPS Certification #	5/1/12	12/31/11
Column E	Method for line losses	5/1/12	12/31/11
Column F – Q	Monthly Procurement from Facility (January – December 2007)	5/1/12	12/31/11
Column R	Annual Procurement from Facility	12/31/08	12/31/08*
Cell A 29	Total Annual Retail Sales 2007	5/1/13	12/31/11
Cell H 29	Total Certified Renewables Procured	12/31/08	12/31/08

* Granted on a facility-specific basis and for all facilities in the aggregate.