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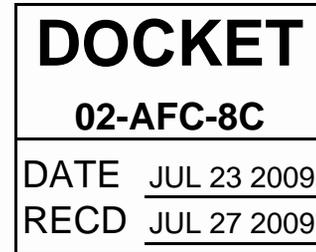
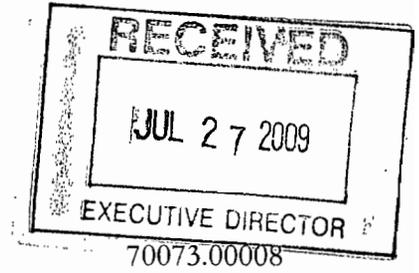
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July 23, 2009

VIA OVERNIGHT MAIL
CONFIDENTIAL MATERIALS ENCLOSED

Ms. Melissa Jones
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512
(916) 654-4996



Re: Application for Confidential Designation, Salton Sea Unit 6 Geothermal Power Plant Major Amendment, No. 02-AFC-2C

Dear Ms. Jones:

Pursuant to a request by Senior Staff counsel Deborah Dyer, enclosed please find an additional copy of CE Obsidian Energy LLC's ("CEOE") "Application for Confidential Designation" submitted to your attention on July 8, 2009.

We appreciate your continued consideration of CEOE's Application.

Sincerely,

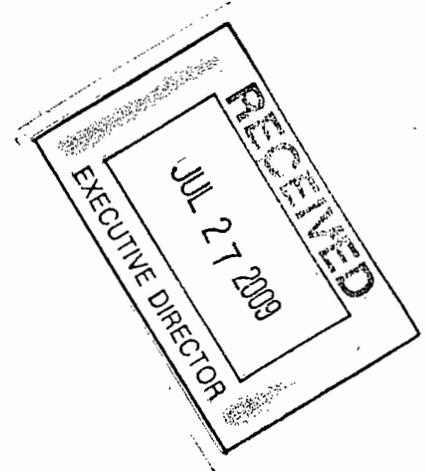
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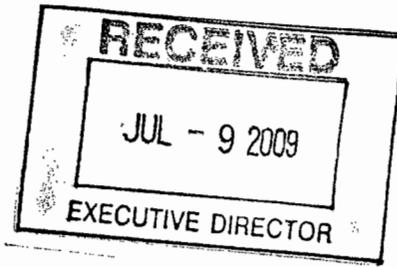
Enclosure

cc: Doug Hackley, Project Manager, CEOE
Michael Fawdry, PE

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July 8, 2009

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**VIA OVERNIGHT MAIL
CONFIDENTIAL MATERIALS ENCLOSED**

Ms. Melissa Jones
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512
(916) 654-4996

Re: Application for Confidential Designation, Salton Sea Unit 6 Geothermal Power Plant Major Amendment, No. 02-AFC-2C

Dear Ms. Jones:

Enclosed please find CE Obsidian Energy LLC's ("CEOE") "Application for Confidential Designation" pursuant to the California Public Records Act ("PRA"), Cal. Gov't Code §§ 6250-6276.48 and 20 C.C.R. § 2505 et seq. CEOE seeks a confidential designation for the information contained in Exhibit B to the Application, which consists of certain responses to CEC data requests concerning the above-referenced Amendment Petition.

As indicated in the Application, the data request responses in Exhibit B are exempt from disclosure under the PRA or any other law pursuant to: (1) Government Code § 6254(k), California Evidence Code §§ 1060 et seq., and California Civil Code §§ 3426-3426.11 as "privileged information" and "trade secrets;" (2) Government Code § 6255(a), because the public interest clearly favors nondisclosure; (3) Government Code § 6254(k) and the federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as "commercial or financial information obtained from a person and privileged and confidential;" (4) in part, Government Code § 6254(i) as privileged taxpayer information; and (5) in part, Government Code § 6254(e) as confidential plant production data or "similar information."

CEOE understands that it may take up to thirty days for the CEC to make a decision on CEOE's Application. However, CEOE also understands that, while this review is occurring, the information that is the subject of the Application will be forwarded to the appropriate technical staff who are reviewing CEOE's Amendment Petition. We think this is a sensible approach and will avoid any unnecessary delay in that review process.

Melissa Jones, Executive Director

July 8, 2009

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If CEOE's Application is granted, we respectfully request that you promptly notify us of any request that you receive seeking disclosure of the information in Exhibit B under the PRA or any other law.

We appreciate your consideration of CEOE's Application.

Sincerely,



Matthew J. Sanders
PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Doug Hackley, Project Manager, CEOE
Michael Fawdry, PE

LEGAL_US_W # 62204549.1

APPLICATION FOR CONFIDENTIAL DESIGNATION
(Title 20 Cal. Code Regs. § 2505 et seq.)

To: Energy Commission Executive Director

Docket No.: 02-AFC-2C
(Salton Sea Unit 6 Geothermal Power Plant Major Amendment)

Applicant: CE Obsidian Energy LLC

Address: 7030 Gentry Road
Calipatria, CA 92233

Contacts: Doug Hackley Project Manager (760) 348-4025 doug.hackley@calenergy.com	Michael P. Fawdry P.E., c/o CalEnergy Corporation (760) 348-4032 / (518) 810-1395 (cell) MPFawdry@aol.com
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1(a). Title, date, and description (including number of pages) of the information or data for which you request confidential designation. Information or data seeking a designation of confidentiality must be included with this application.

The CEC (through Matthew Trask, Amendment Project Manager, Energy Facility & Siting Division) has submitted to CE Obsidian Energy LLC ("CEOE") Data Requests associated with CEOE's amendment petition concerning the Salton Sea Unit 6 Geothermal Power Plant ("Amended Project"). The Data Requests are attached as Exhibit A.

CEOE is in the process of submitting responses to these Data Requests. As discussed in further detail below, Data Request numbers 39, 41, and 50 pertain to information that is confidential and protected from disclosure under the Public Records Act ("PRA"), Cal. Gov't Code §§ 6250-6276.48, and any other law. These Data Requests, and CEOE's confidential responses to them, are attached as Exhibit B.

1(b). Specify the part(s) of the information or data for which you request confidential designation.

As indicated in the answer to Question 1(a), CEOE requests confidential designation for its responses to Data Request numbers 39, 41, and 50. CEOE does not seek confidential designations for its responses to the remaining Data Requests.

The response to Data Request 39 concerns the Amended Project's heat and mass balance diagrams for each mode of operation. As the CEC recognized in its Data

Request, "Section 2.5.2 of the amendment [petition] states that the heat balance diagram will be provided on a confidential basis to staff upon request."

The response to Data Request 41 concerns CEOE's land lease and title information for the Amended Project. The agreements that provide this information have been attached hereto as Exhibit C.

The response to Data Request 50 concerns CEOE's property tax applicability calculation for the Amended Project.

If CEOE's Application is granted, CEOE respectfully requests that the CEC promptly notify CEOE of any request that the CEC receives seeking disclosure of the information in Exhibit B under the PRA or any other law.

2. State and justify the length of time the Energy Commission should keep the information or data confidential.

The CEC should keep CEOE's responses to Data Requests 39, 41, and 50 confidential for the duration of the CEC's certification or the operating life of the Amended Project, whichever is longer.

CEOE's heat and mass balance information, lease and title agreements, and property tax applicability calculation apply to the Amended Project throughout its operational life. The independent economic value that CEOE derives from this information (see response to Question 3(a), *infra*) does not change or become less valuable over time. Similarly, the risk that a competitor, energy off-taker, lessor, or lessee could gain unfair competitive advantage does not change over time; that risk is as strong now as in the Amended Project's second or third decade of operation.

3(a). State the provision(s) of the Public Records Act (Gov. Code § 6250 et seq.) or other law that allows the Energy Commission to keep the information or data confidential, and explain why the provision(s) apply to that material.

CEOE's responses to Data Request numbers 39, 41, and 50 are confidential and exempt from disclosure pursuant to the following provisions of law:

- (1) PRA (Gov't Code) § 6254(k) and Cal. Evidence Code § 1060;
- (2) PRA (Gov't Code) § 6255(a);
- (3) The federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552
- (4) PRA § 6254(i) (Data Request 50 response only); and
- (5) PRA § 6254(e) (Data Request 39 response only).

PRA § 6254(k) and Cal. Evid. Code § 1060: Trade Secrets

Section 6254(k) of the PRA exempts from disclosure “[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.”

Among the documents protected by privilege under the California Evidence Code are “trade secrets.” See Cal. Evid. Code § 1060. Section 1060 provides that, “[i]f he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.”

“Trade secret” is defined in the California Uniform Trade Secrets Act, Cal. Civil Code §§ 3426-3426.11, as:

information, 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.

Cal. Civil Code § 3426.1(d); see also *ABBA Rubber Co. v. Seaquist*, 235 C.A. 3d 1, 18-22 (1991) (stating that definition of “trade secret” consists of three elements: (a) information (b) which is valuable because it is unknown to others and (c) which the owner has attempted to keep secret); *City of Hemet v. Superior Court*, 37 C.A. 4th 1411, 1428 (1995) (discussing exemptions from disclosure under §§ 6254(k) and 1060).

CEO’s responses to Data Requests 39, 41, and 50 are “trade secrets” within the meaning of Civil Code § 3426.1(d). Regarding the first factor (whether the information at issue derives independent economic value from not being generally known):

- The response to Data Request 39, concerning the Amended Project’s heat and mass balance information, is an integral part of the Amended Project’s engineering design and is proprietary. CEOE has developed this information at considerable engineering development expense and effort. If this information were disclosed, a competitor would be able to determine the Amended Project’s resource productivity and viability, thermal cycle efficiency, project revenue, and return on investment. Any such determination could lend an unfair commercial advantage to one or more competitors or energy off-takers.

- The response to Data Request 41, concerning the Amended Project’s land lease and title information, is comprised of commercial agreements in place between CEOE and lessors and lessees (see Exhibit C). The agreements delineate competitive and proprietary information that includes, among other things, lease duration, compensation for lease rights, and royalties. Disclosure of any of this or the other confidential information in the agreements could lend an unfair commercial advantage to a competitor or a lessor/lessee in ongoing and/or future lease agreement negotiations.
- The response to Data Request 50, concerning the Amended Project’s property tax applicability calculation, includes the proprietary methodology CEOE uses for calculating tax liability based on return on investment. This methodology is an integral component of CEOE’s business model. Disclosure of this component of CEOE’s business model could lend an unfair commercial advantage to a competitor, off-taker, lessor, or lessee.

See also response to Question 3(b), *infra*. The responses to Data Requests 39, 41, and 50 also satisfy § 3426.1(d)’s second factor—whether the information at issue is “subject to efforts that are reasonable under the circumstances to maintain its secrecy.” First, CEOE has not disclosed the information in its responses in its Amendment Petition or through any other public filing or record. Second, CEOE has required all non-employee parties that have received or otherwise been privy to the information to sign confidentiality agreements that prohibit those parties from disclosing the information with CEOE’s prior express written consent. This restriction does not expire. Third, within CEOE, access to the information is given only to those employees who require it. Fourth, all documents containing the information are identified as “confidential” or bear similar markings. In short, CEOE has taken every reasonable effort to keep the information at issue confidential.

For these reasons, and for the additional reasons set forth below, CEOE’s responses to Data Requests 39, 41, and 50 are “trade secrets” protected from disclosure under the PRA.

PRA § 6255(a): The Public Interest Favors Nondisclosure

Section 6255(a) of the PRA exempts from disclosure records where the public’s interest in disclosure “clearly outweighs” the public’s interest in disclosure. Thus, an agency may withhold documents where it determines that the public interest clearly favors nondisclosure. See, e.g., *City of San Jose v. Superior Court*, 74 C.A. 4th 1008, 1022-25 (1999) (explaining that § 6255(a) provides an exemption separate from express exemptions such as § 6254(k)); see also *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1345-46 (1991); *Wilson v. Superior Court*, 51 C.A. 4th 1136, 1141 (1996).

Here, the public interest's in the *nondisclosure* of CEOE's responses to Data Requests 39, 41, and 50 is the same interest underlying the confidentiality of all trade secret or other confidential business information: to promote innovation, protect investment, and discourage unfair competition. Indeed, these interests are the reasons why the PRA, through the Evidence Code and the Uniform Trade Secrets Act, expressly protects such information from disclosure. Nondisclosure is key to ensuring that these interests are met.

In contrast, the public has little interest in the *disclosure* of CEOE's responses. The CEC's certification process is designed to provide a full and fair assessment of the potential environmental impacts of the Amended Project, and the information that CEOE has provided and continues to provide through this process is sufficient to accomplish that purpose. Indeed, CEOE has minimized the amount of information that it seeks to protect from disclosure; of the 64 Data Requests received by the CEC, CEOE seeks confidential designation for only 3. *See also* response to Question 4, *infra* (explaining efforts CEOE has made to limit confidential information). None of the information in CEOE's responses to Data Requests 39, 41, and 50 is necessary for the public to understand and evaluate the Amended Project and, in any event, the CEC will have that information available to it during its review.

For these reasons, the public's interest in nondisclosure of CEOE's responses clearly outweighs any public interest in disclosure.

PRA § 6254(k) and FOIA, 5 U.S.C. § 552: Federal Law

As noted above, Section 6254(k) of the PRA exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to *federal* or state law" (emphasis added).

FOIA, 5 U.S.C. § 552, is a federal law that protects from disclosure records that either are "specifically exempted from disclosure by statute" or are "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. §§ 552(b)(3)-(4) (emphasis added). The California Supreme Court has held that the PRA and FOIA "should receive a parallel construction." *Am. Civil Liberties Union Found. V. Deukmejian*, 32 Cal. 3d 440, 451 (1982); *see also Braun v. Taft*, 154 C.A. 3d 332, 342 (1984) (using FOIA to construe PRA); *S. Coast Newspapers v. Oceanside*, 160 C.A. 3d 261, 267 (1984) (same).

For the same reasons that CEOE's responses to Data Requests 39, 41, and 50 are protected from disclosure under PRA § 6454(k), Evidence Code § 1060, and Civil Code § 3426.1(d), those responses are protected from disclosure under § 6254(k) and FOIA. The information in the responses is "commercial or financial information" that CEOE keeps "privileged and confidential," and that could lead to an unfair competitive advantage if released.

PRA § 6254(i): Tax Information

Section 6254(i) exempts from disclosure “[i]nformation required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in an unfair competitive disadvantage to the person supplying the information.”

CEOE’s response to Data Request 50 includes CEOE’s property tax applicability calculation for the Amended Project. Although this calculation is not supplied through the collection of local taxes, the CEC has required it, it concerns local (property) taxes, and CEOE is supplying it in “connection with” the collection of such taxes. In addition, the disclosure of this calculation could result in unfair competitive advantage to CEOE’s competitors, as the calculation represents part of CEOE’s confidential business model.

PRA § 6254(e): Plant Production Data

Section 6254(e) exempts from disclosure “[g]eological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.”

CEOE’s response to Data Request 39 concerns the Amended Project’s heat and mass balance information. This proprietary information is an integral part of the Amended Project’s engineering design and is related to the Project’s resource productivity and viability, thermal cycle efficiency, project revenue, and return on investment—all of which are forms of “plant production data,” or, at the least, “similar information relating to utility systems development.”

- 3(b). Discuss the public interest in nondisclosure of the material submitted for a confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.**

As discussed above in response to Question 3(a), the public has an acute interest in the *nondisclosure* of CEOE’s responses to Data Requests 39, 41, and 50. The information contained in the response to Data Request 39 is proprietary information that CEOE has developed at great engineering expense, and reveals the Amended Project’s resource productivity and viability, thermal cycle efficiency, project revenue, and return on investment. The information contained in the response to Data Request 41 is competitive and proprietary information that includes, among other things, lease duration, compensation for lease rights, and royalties. The information contained in the response to Data Request 50 includes the proprietary methodology CEOE uses for calculating tax liability based on return on investment. This methodology is an integral component of CEOE’s business model.

The disclosure of any of this information would put CEOE at a competitive disadvantage by allowing a competitor, energy off-taker, lessor, lessee, or other member of the public to:

- develop or improve competing projects;
- take advantage of useful information and methodologies without incurring the substantial costs of developing them;
- weaken CEOE's bargaining position in ongoing or future negotiations; and
- obtain otherwise confidential details of the Amended Project's design and operation, such as but not limited to the Amended Project's resource productivity and viability, thermal cycle efficiency, project revenue, and return on investment, as well as CEOE's business model.

If the CEC does not grant this application, CEOE's Data Request responses will be posted on the CEC's web site and will be searchable via search engines and Adobe Acrobat. There will be no difficulty for any member of the public to obtain this confidential information. (It would not matter if there were a delay in the CEC's publication of these responses, since the value of the information in the responses to competitors and others does not diminish over time. See response to Question 2, *supra*).

- 4. State whether the information or data can be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why.**

Aggregation or masking will not be sufficient to protect CEOE's responses to Data Requests 39, 41, and 50.

Aggregating these responses with, for example, CEOE's responses to the remaining Data Requests, will do nothing to prevent competitors, energy off-takers, lessors or lessees from using the confidential business and trade secret information to gain an unfair competitive advantage. This is particularly true because the responses will be posted on the CEC's web site and will be searchable via search engines and Adobe Acrobat.

As for masking, even if, for example, the CEC redacts CEOE's name and the name of the Amended Project, CEOE's competitors and other members of the public still will be able to acquire and use the information to obtain an unfair advantage. Indeed, given the small number of large geothermal power projects, members of the public will be able to link the Amended Project to CEOE even if such redactions are made.

CEOE has done everything possible to limit the amount of information for which it seeks confidential designation. Specifically, CEOE has:

- disclosed almost all information concerning the Amended Project in its amendment petition;
- requested that only 3 of its responses to the 64 Data Requests be designated confidential; and
- minimized the amount of information in each of the responses.

For these reasons, aggregating and/or masking CEOE's responses to Data Requests 39, 41, and 50 will not be effective in protecting the information in those responses.

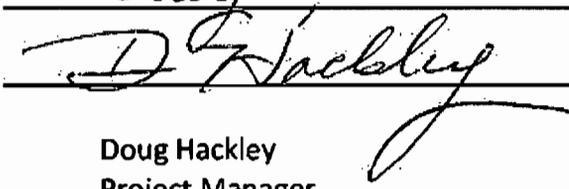
5. State how the material is kept confidential by the applicant and whether it has even been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred.

As explained in the response to Question 3(a), CEOE has taken all reasonable effort to keep the information in its responses to Data Requests 39, 41, and 50 confidential. CEOE has not disclosed the information in its responses in its Amendment Petition or through any other public filing or record, and CEOE identifies all documents containing the information as "confidential" or imprints them with similar markings. In addition, within CEOE, access to the information is given only to those employees who require it.

CEOE has disclosed the information to certain non-employee parties, including CEOE's environmental consultant and attorneys. However, CEOE has required these parties, and indeed requires any party with access to the information, to sign strict confidentiality agreements that prohibit them from disclosing the information without CEOE's prior express written consent. This restriction does not expire. No other disclosure of the information has occurred, by CEOE or any other party.

* * * *

I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge, and that I am authorized to make the application and certification on behalf of the applicant.

Dated: July 8 2009
Signed: 

Name: Doug Hackley
Title: Project Manager
Representing: CE Obsidian Energy LLC