

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512



September 10 , 2009

Greggory L. Wheatland
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento CA 95816

DOCKET**98-AFC-3C**DATE 9/10/2009RECD. 9/15/2009

RE: **Output and Heat Rate Data: Application for Confidentiality**
Delta Energy Center
Docket No. 98-AFC-3C

Dear Mr. Wheatland:

On August 10, 2009, Delta Energy Center, LLC ("Applicant") filed an Application for Confidentiality with the California Energy Commission (Energy Commission) for information related to the Delta Energy Center. The application seeks confidentiality for the output and heat rate data.

Applicant claims that the information is trade secret, stating:

This information states the power plant's operating efficiencies and enables "back calculation" of trade secret project designs, and as such is itself a trade secret.

The application cites to California Government Code section 6254.7(d) (the Public Records Act), and California Civil Code section 3426.1(d) in support of the claim that the information is trade secret, and therefore should be confidential.

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."

Although the application cites to law related to trade secrets, which in theory would allow the Commission to designate trade secret information as confidential, the application does not state sufficient facts to allow the Commission to designate the output and heat rate data as confidential. The only factual information the application offers is that the data 'states the power plant's operating efficiencies and enables "back calculation" of trade secret project designs.' Furthermore, the application fails to state the specific nature of the trade secret or how applicant would lose a competitive advantage, the specific nature of the advantage and 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. This information is required by California Code of Regulations, title 20, section 2505(a)(1)(D).

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For the reasons stated above, your application for confidential designation is denied. If you believe you have factual information to support your application, I invite you to submit a new application containing those facts. Alternatively, Applicant has fourteen days to appeal this denial. The output and heat rate data that you have submitted shall not be available for public inspection or copying for a period of fourteen days, in order to allow you the opportunity to submit a new application or appeal this determination. California Code of Regulations, title 20, section 2505(a)(3)(B) & (C).

If you have any questions concerning this matter, please contact Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,



Melissa Jones
Executive Director

cc: Docket Unit
CEC Project Manager
CEC Legal Counsel