

ELLISON, SCHNEIDER & HARRIS L.L.P.

ANNE J. SCHNEIDER
1947-2010

CHRISTOPHER T. ELLISON
JEFFERY D. HARRIS
DOUGLAS K. KERNER
ROBERT E. DONLAN
ANDREW B. BROWN
GREGGORY L. WHEATLAND
CHRISTOPHER M. SANDERS
LYNN M. HAUG
PETER J. KIEL

ATTORNEYS AT LAW

2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CALIFORNIA 95816
TELEPHONE: (916) 447-2166
FACSIMILE: (916) 447-3512
<http://www.eslawfirm.com>

BRIAN S. BIERING
KATHRYN C. COTTER
JEDEDIAH J. GIBSON
CHASE B. KAPPEL
SHANE E. C. MCCOIN
SAMANTHA G. POTTENGER

OF COUNSEL:
ELIZABETH P. EWENS
CHERYL L. KING
MARGARET G. LEAVITT
RONALD LIEBERT

COMPLETED

May 23, 2011

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

DOCKET 11-HRG-1
DATE 05/23/11
RECD. 05/23/11



Re: EnergySource Application for Confidential Designation
In Response to Letter from Shahab Khoshmashrab
Dated March 7, 2011

Dear Ms. Jones:

Pursuant to Title 20 California Code of Regulations (CCR) Sections 2501 *et seq.*, EnergySource hereby submits this "Application for Confidential Designation" for certain appendices attached to EnergySource's response to the attached letter from Shahab Khoshmashrab dated March 7, 2011. There is no docket number for this material which responds to a Commission staff-initiated inquiry.

We are submitting the Application and confidential material directly to you without docketing at the Docket Unit. Enclosed are twelve copies plus an original of this request and five copies of the confidential information it concerns. Please feel free to contact us at (916) 447-2166 should you have any questions or require additional information. Thank you for your consideration of EnergySource's request.

Sincerely,

Brian S. Biering
Jeffery D. Harris
Attorneys for EnergySource

APPLICATION FOR CONFIDENTIAL DESIGNATION

EnergySource Responses To CEC Engineering Questionnaires for Hudson Ranch Power I and Hudson Ranch Power II

1. *Specifically indicate those parts of the record which should be kept confidential.*

The information provided in EnergySource's May 20, 2011 response to Mr. Khoshmashrab's March 7, 2011 letter regarding *Hudson Ranch I and Hudson Ranch II Geothermal Plants Generating Capacities*. The information contained in the following appendices should be kept confidential:

- Appendix 3: Veerkamp Engineering Report
- Appendix 5: Hudson Ranch I's application to IID for a 49.9 MW generating facility, dated January 31, 2006.
- Appendix 9: The IID System Impact Study for Hudson Ranch, dated January 29, 2008.
- Appendix 10: The IID Facilities Study for Hudson Ranch, dated January, 2008.

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

The technical data contained in Appendix 3, the Veerkamp Engineering Report must remain confidential for the operating life of the power plant. This information states the power plants' operating efficiencies, project equipment, layout, and other project-specific information and enables "back calculation" of trade secret project designs, and as such is a protected trade secret. In particular, operating a geothermal facility in the Salton Sea requires highly specialized engineering to account for the high degree of salinity in the area. It is EnergySource's understanding that no other company possesses the same chemical engineering technology that EnergySource will employ at the Hudson Ranch I and the Hudson Ranch II facilities.

Similarly, Appendices 5, 9, and 10 collectively include commercially sensitive, project planning and project-specific design information, that could disclose trade secret information regarding the transmission system and valuable "queue" positions.

3. *Cite and discuss (i) the provisions of the Public Records Act or other law which allow the commission to keep the record confidential and (ii) the public interest in nondisclosure of the record.*

The Veerkamp Engineering report (Appendix 3) and the IID materials (Appendices 5, 9, and 10) contain trade secrets related to the specific technologies employed and the commercially valuable information related to IID's interconnection queue. The 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).)

The California Civil Code Section 3426.1(d) defines a "trade secret" as follows:

(d) "Trade secret" means 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.

The Commission's regulations provide for information to be designated as confidential if it "contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage." (20 CCR § 2505(a)(1)(D).). As noted above, the Veerkamp Engineering Report states the power plants' operating efficiencies, project equipment, layout, and other detailed, project-specific information that enables "back calculation" of trade secret project designs. Operation of a geothermal facility in the Salton Sea requires highly specialized and individualized engineering to account for the salinity in the area. The release of this information to EnergySource's competitors would constitute the loss of a significant business advantage. Accordingly, the Veerkamp Engineering report contains information that is a trade secret and as such should be designated confidential.

Appendices 5, 9, and 10 include commercially sensitive, project planning and project-specific design information that fall within the definitions of "trade secret" quoted above. These documents contain information regarding the facility designs for Hudson Ranch I and Hudson Ranch II, the transmission system, and the operational designs for Hudson Ranch I and Hudson Ranch II. In addition, collectively, these three documents contain a "compilation of information" as that term of art is used in the Public Records Act concerning EnergySource's business practices and future business plans. The release of this information to EnergySource's competitors would constitute a loss of a significant business advantage. For example, competitors may be able to determine how to set up a geothermal facility in the Salton Sea area, and/or mimic EnergySource's business plans for transmission development. Accordingly, Appendix 5, 9 and 10 contain trade secrets and should be designated confidential.

4. *State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

EnergySource considered whether it would be possible to aggregate or mask the information contained in the Veerkamp Engineering report. However, no feasible

method of aggregating or masking the information could be identified that would not either disclose the information or render the information provided useless.

EnergySource also considered whether it would be possible to aggregate or mask the information contained in Appendices 5, 9 and 10. The Imperial Irrigation District is a very small transmission balancing authority, and as such there is no way to mask or aggregate the information in the transmission documents without disclosing the identity of EnergySource or its business plans.

5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

EnergySource has not disclosed any of the subject information in the Veerkamp Report to anyone other than its employees, attorneys and consultants working on the projects. Moreover, this information has not been disclosed to persons employed by, or working for, EnergySource except on a confidential, "need-to-know" basis.

The Facility Impact Study, System Impact Study and the application for interconnection have not been disclosed by EnergySource to anyone other than its employees, attorneys and consultants working on the projects. Moreover, this information has not been disclosed to persons employed by or working for, EnergySource except on a confidential, "need-to-know" basis.

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 belief. I am authorized to make this Application and Certification on behalf of the Applicant.

Dated: May 23, 2011

ELLISON, SCHNEIDER & HARRIS L.L.P.

By: Brian Biering

Brian S. Biering
Jeffery D. Harris
Ellison, Schneider & Harris L.L.P.
Attorneys for EnergySource