

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



June 13, 2011

DOCKET**11-HRG-1**

DATE JUN 13 2011

RECD. JUN 21 2011

Brian S. Biering
Ellison, Schneider & Harris LLP
2600 Capitol Ave, Suite 400
Sacramento, CA 95816

Re: **Application for Designation of Confidential Records relating to Hudson Ranch Engineering Reports**
Docket Number 11-HRG-1

Dear Mr. Biering:

On May 23, 2011, EnergySource ("Applicant") filed an application for confidentiality in the above-captioned docket. The application requests confidential designation for engineering data related to the Hudson Ranch geothermal generating capacity. Specifically, Applicant requests confidential designation for the following reports:

1. *Appendix 3: Veerkamp Engineering Report*
2. *Appendix 5: Hudson Ranch I's application to the Imperial Irrigation District dated January 31, 2006*
3. *Appendix 9: The Imperial Irrigation District System Impact Study dated January 29, 2008.*
4. *Appendix 10: The Imperial Irrigation District Facilities Study dated January 2008.*

The application states that these reports are confidential because the reports contain information on EnergySource's highly specialized proprietary geothermal engineering technology and that such information constitutes trade secrets developed by EnergySource. The application notes that disclosure of the report would provide market participants access to competitively sensitive information that would harm EnergySource's business and that the submitted information is otherwise unavailable.

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." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.)

The California courts have traditionally used the following definition of trade secret:

a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, the application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to the applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the above listed reports confidential on the grounds that they contain trade secrets and/or proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage.

Applicant requests that the *Veerkamp Engineering Report* and the *Hudson Ranch I's Application* be kept confidential for the operating life of the power plant and that the *Imperial Irrigation District System Impact Study* and *Imperial Irrigation District Facilities Study* be kept confidential until power plant operation begins. The Applicant notes that no feasible method of aggregation or masking could be identified that would not either disclose the information or render the information provided useless. Therefore, the Applicant does not believe the confidential information can be aggregated to a level that would allow disclosure.

For the above reasons, your request for confidential designation for the four reports listed above is granted. The *Veerkamp Engineering Report* and the *Hudson Ranch I's Application* will remain confidential for the operating life of the power plant and the *Imperial Irrigation District System Impact Study* and *Imperial Irrigation District Facilities Study* will remain confidential until the facility begins operating.

Be advised that persons may petition to inspect or copy records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such

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petitions are set forth in the California Code of Regulations, title 20, section 2506. If you have any questions concerning this matter, please contact Jared Babula, Staff Counsel, at (916) 651-1462.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa Jones", with a stylized flourish at the end.

Melissa Jones
Executive Director

cc: Docket Unit
Energy Commission Project Manager