

CALIFORNIA ENERGY COMMISSION

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



June 22, 2011

Mr. Jason Armenta
Ellison, Schneider & Harris L.L.P.
2600 Capitol Ave, Suite 400
Sacramento, CA 95816

DOCKET	
00-SB-1305	
DATE	JUN 22 2011
RECD.	JUN 24 2011

RE: **Application for Designation of Confidential Records relating to Calpine Corporation's Power Source Disclosure Form**
Docket Number 00-SB-1305

Dear Mr. Armenta:

On June 1, 2011, Calpine Corporation ("Applicant") filed an application for confidentiality in the above-captioned docket. The application requests confidential designation for specific power source disclosure data related to energy purchases and retail sales. Specifically, Applicant requests confidential designation for the purchase and sales information contained in the following Excel worksheet cells:

1. Schedule 1: cells O26, Q26, Q27, Q30
2. Schedule 2: cells E14, E16, E19, E25, C27, E27, C29, E29, C31

The application states that the energy purchase and retail sales information contained in the cells are confidential trade secrets and commercially sensitive data. Disclosure of such data would allow sellers of power to calculate Calpine's total retail sales and required capacity and potentially manipulate the energy market. This could result in increased costs for Calpine and its customers. The application notes that Calpine has taken steps to maintain the secrecy of this information.

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 energy purchase and retail sales information 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 harming Applicant's business.

Applicant requests that the energy purchase and retail sales information be kept confidential for three years. The application cites to the CPUC's Decision 06-06-066 and Decision 08-08-023 as support for a three year time period. Citing to a lengthy CPUC decision covering a number of issues with multiple confidentiality time tables is not sufficient to support the three year request. This is especially so given similar applications from other entities limit the confidentiality to a year or less. It should be noted that Decision 06-06-066 states, *"We start with a presumption that information should be publicly disclosed and that any party seeking confidentiality bears a strong burden of proof."* Like our sister agency, the Energy Commission also encourages an open transparent process while balancing the need to protect sensitive business and market information. The burden likewise is on the Applicant.

The Applicant has not provided sufficient evidence to show a shorter confidentiality period would not adequately protect the Applicant's business interest and customers.

For the above reasons, your request for confidential designation for the data listed above is granted but the confidentiality term is limited to one year. The data will remain confidential until **June 31, 2012**. The confidential data can be disclosed prior to that date if aggregated with other data to a state wide or higher level.

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 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,



ROBERT P. OGLESBY
Executive Director

cc: Docket Unit
Energy Commission Project Manager