

CALIFORNIA ENERGY COMMISSION

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



July 25, 2011

DOCKET**11-AFC-1**

DATE JUL 25 2011

RECD. JUL 29 2011

Melissa A. Foster
Stoel Rives, LLP
500 Capitol Mall, Ste. 1600
Sacramento, CA. 95814

**RE: Application for Confidentiality Cluster 2 Phase I Interconnection
Individual Project Report Pio Pico Energy Center
Docket No. 11-AFC-1**

Dear Ms. Foster:

On July 11, 2011, Pio Pico Energy Center, LLC, filed an application for confidentiality to the above-captioned docket, on behalf of Pio Pico Energy Center Project ("Applicant"). The application seeks confidentiality for a document related to the Cluster 2 phase I Interconnection Study performed by the California Independent System Operator. Specifically the Applicant requests confidentiality for the (Enclosure A) *Individual Project Report* for the Pio Pico Energy Center Project.

The application states that the Individual Project Report contains confidential trade secrets and commercially sensitive data relating to technology, research and pricing. The content of the report derives value from not being disclosed to the public or to competitors because of the competitive nature of the energy market. Release of such information could hinder the process by which the Applicant and other companies facilitate the generation of energy within California.

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 Individual Project Report confidential on the grounds that it contains 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 Individual Project Report be kept confidential until the Pio Pico facility commences commercial operation and that the report represents the maximum extent to which information can be aggregated and masked.

For the above reasons, your request for confidential designation of the Individual Project Report is granted. The data will remain confidential until the Pio Pico facility commences commercial operation.

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,

/S/

Robert P. Oglesby
Executive Director

cc: Docket Unit
Energy Commission Project Manager