

## CALIFORNIA ENERGY COMMISSION

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

**DOCKET****03-RPS-1078**DATE Aug 05 2011RECD. Aug 09 2011

August 5, 2011

Andrew Brown  
Ellison, Schneider & Harris L.L.P.  
2600 Capitol Ave, Suite 400  
Sacramento, CA 95816

Re: **Application for Designation of Confidential Records Relating to  
Annual RPS Retail Sales, Praxair Plainfield, Inc.  
Docket Number 03-RPS-1078**

Dear Mr. Brown:

On July 22, 2011, Praxair Plainfield, Inc ("Applicant") filed an application for confidentiality in the above-captioned docket. The application requests confidential designation for Renewable Portfolio Standard (RPS) data provided to the California Energy Commission (Energy Commission). Specifically, Applicant requests confidential designation for retail sales information contained in cell B13 of the 2008 RPS Summary Tab.

The application states that the retail sales information contained in the cells are confidential trade secrets and commercially sensitive data. Disclosure of such data would cause loss of competitive advantage for Plainfield's customers. The application notes that the data can provide insight into the customer's costs of production due to energy intensity of its products and therefore Praxair Plainfield holds information on retail sales data in confidence. The Applicant also notes that in 2009 the Energy Commission previously granted a confidentiality request by Praxair Plainfield for similar data.

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. . . .

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(*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 Energy Commission to keep the above listed 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 economic advantage.

Applicant requests that the retail sales data contained in cell B13 information be kept confidential until **December 31, 2012**. The Applicant notes that the confidential data can be disclosed to the public if aggregated with other energy service provider data to a state wide level.

For the above reasons, your request for confidential designation for the data listed above is granted. The data will remain confidential until **December 31, 2012**, but 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,

/S/

Robert P. Oglesby  
Executive Director

cc: Docket Unit  
Gina Barkalow