

COMPLETED

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

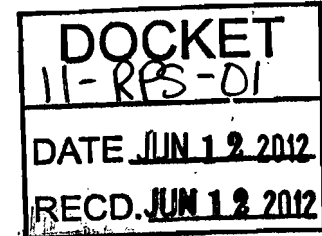
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CALIFORNIA 95816
TELEPHONE: (916) 447-2166
FACSIMILE: (916) 447-3512
<http://www.eslawfirm.com>

BRIAN S. BIERING
CRAIG A. CARNES, JR.
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

June 12, 2012

Robert Oglesby
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814



Re: Calpine PowerAmerica-CA, L.L.C. ("CPA") requests confidential designation of a conformation letter that has been requested by staff to verify procurement claims between Calpine Energy Services ("CES") and Idaho Power Company and two additional confirmation letters between CPA and CES.

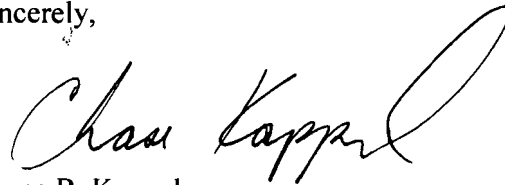
Dear Mr. Oglesby:

Pursuant to Title 20, California Code of Regulations Section 2505, CPA submits this "Application for Confidential Designation" for confidential treatment of agreements for the purchase and sale of renewable energy credits for November and December 2010. The confidential information associated with this application is being provided on 5 CDs.

The docket number associated with this request is 11-RPS-01. The confidential information being submitted was requested by Energy Commission Staff in connection with Staff's efforts to collect information from Idaho Power Company and CES for the RPS 2008-2010 Procurement Verification Report.

Please feel free to contact me at (916) 447-2166 should you have any questions or require additional information. Thank you for your consideration of this request.

Sincerely,



Chase B. Kappel
Ellison, Schneider & Harris L.L.P.

Attorneys for Calpine Corporation

Enclosure.

APPLICATION FOR CONFIDENTIAL DESIGNATION

Contracts Requested to Verify Tradable Renewable Energy Credit Reporting of

Pursuant to Title 20, California Code of Regulations § 2505, and as permitted by the Overall Program Guidebook (Fourth Edition, 2012),¹ Calpine PowerAmerica-CA, L.L.C. (“CPA”), hereby requests confidential designation of contractual documents providing information on the purchase and sale of renewable energy credits (“REC”) claimed for renewable portfolio standard (“RPS”) compliance purposes by CPA (“Agreements”). These Agreements consist of a transaction confirmation for product sold by Idaho Power Company to Calpine Energy Services, L.P. and contractual documents for an associated transaction between Calpine Energy Services, L.P. and CPA. The Agreements are requested by Commission Staff as part of Staff’s efforts to verify renewable procurement claims by CPA, a registered energy service provider.

Specifically, the Commission’s Renewable Energy Office emailed CPA a request for data and documentation related to the 2008-2010 Renewable Portfolio Standard Procurement Verification Report.² As part of this effort, Staff seeks information regarding CPA’s purchase of RECs. Staff has specifically requested that CPA submit “a copy of the contract for this purchase with all confidential and pricing information redacted.”³ However, Calpine considers the Agreements as a whole to be trade secret, and cannot anticipate what information in the Agreements staff seeks in order to verify CPA’s RPS procurement. Therefore, in response to this request, Calpine hereby requests confidential designation of the Agreements in their entirety.

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

CPA requests confidential treatment of the Agreements, which consist of the following:

- (1) The transaction confirmation for the purchase and sale of certain products from Idaho Power Company to Calpine Energy Services, L.P. for the period of November 2, 2010 through December 31, 2010; and

¹ *Renewable Energy Program: Overall Program Guidebook, Fourth Edition*. California Energy Commission, Efficiency and Renewable Energy Division, Publication number: CEC-300-2012-003-CMF, p. 14; see also *Renewables Portfolio Standard Eligibility Guidebook, Fifth Edition*. California Energy Commission, Efficiency and Renewable Energy Division, Publication number: CEC-300-2012-002-CMF, p. 62.

² Email from Theresa Daniels of the Commission’s Renewable Energy Office to A. Kowalewski, E. Osborn and J. Armenta of CPA, May 2, 2012.

³ Email from Theresa Daniels of the Commission’s Renewable Energy Office to E. Osborn, *et al.*, May 25, 2012.

- (2) The transaction confirmation, cover sheet, and amendment for the transaction of certain products from Calpine Energy Services, L.P. to CPA for the period of November 2, 2010 through December 31, 2010.

The Agreements are provided under separate cover with this application.

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

Consistent with applicable law, this information should be held confidential indefinitely in order to protect the proprietary and confidential information identified therein as confidential trade secrets, as described below. CPA is also obligated to maintain the confidentiality of these Agreements pursuant to the terms therein. In addition to the confidential notices provided in the transaction confirmations, the underlying and incorporated standard agreements also contain confidentiality provisions.⁴ However, CPA is aware that the Commission disfavors indefinite confidential designations. Therefore, Calpine requests that this information be designated confidential for a period of at least three years from the end dates of the Agreements.

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.*

Under the Public Records Act "trade secrets" are not public records. (Govt. Code § 6254.7(d).) "Trade secret" includes, but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, 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 having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it." (*Ibid.*)

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

⁴ The transaction confirmation between Calpine Energy Services, L.P. and Idaho Power Company incorporates the Western Systems Power Pool Agreement effective October 12, 2011, and confidentiality section 30 therein. The transaction confirmation between Calpine Energy Services, L.P. and CPA incorporates the Edison Electric Institute Master Power Purchase and Sale Agreement, and Article 10 addressing confidentiality obligations therein.

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The terms and conditions of the Agreements requested by Staff contain confidential information considered by the parties to be trade secret because they are a compilation of information not generally known to the public that are the result of confidential negotiations of commercial trades and services. Disclosure would provide a competitive advantage to Calpine's competitors who do not know or use it, and who could obtain economic value from any disclosure or use. Also, the Agreements are subject to efforts to maintain their secrecy as CPN is obligated to protect this material from disclosure by the Agreements' confidentiality provisions.

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.*

If quantitative, non-price data is aggregated with all data gathered from other parties subject to the Commission's requests for information verifying RPS procurement, then CPA believes that the aggregated information regarding quantities of RECs may be disclosed. Other terms and conditions of the Agreements are not capable of aggregation and are confidential.

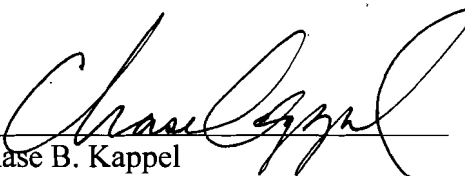
5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

The Agreements are subject to confidentiality clauses protecting the terms and conditions of the Agreements. The contents of the Agreements are known only by the parties to each agreement. CPA has not disclosed any of the subject information to anyone other than its employees and attorneys.

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 the Application and Certification on behalf of Calpine and Applicants.

Dated: June 12, 2012

ELLISON, SCHNEIDER & HARRIS L.L.P.

By: 

Chase B. Kappel
Ellison, Schneider & Harris, LLP
2600 Capitol Ave., Suite 400
Sacramento, CA 95816
Phone: (916)447-2166
Email: cbk@eslawfirm.com

Attorneys for Calpine PowerAmerica-CA, LLC