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June 5, 2012

DOCKET 11-RPS-01
DATE 06/5/12
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COMPLETED

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

Re: Calpine Energy Services, L.P. requests confidential designation of two biogas purchase agreements that have been requested by staff to verify procurement claims of Noble Americans Energy Solutions, LLC

Dear Mr. Oglesby:

Pursuant to Title 20 California Code of Regulations Sections 2501 *et seq.*, Calpine Energy Services, L.P. ("Calpine") submits this "Application for Confidential Designation" for two biogas purchase agreements. Specifically, Calpine seeks confidential treatment for two biogas purchase agreements entered into in October 2010 and November 2010. The confidential information associated with this application is being provided on 5 CDs.

There is no docket number associated with this request. The confidential information being submitted was requested by Energy Commission Staff in connection with Staff's efforts to collect information from Noble Americans Energy Solutions, LLC 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 Procurement Claims of Noble Americans Energy Solutions, LLC

Pursuant to Title 20, California Code of Regulations § 2505, and as permitted by the Overall Program Guidebook (Fourth Edition, 2012),¹ Calpine Energy Services, L.P. (“Calpine”), hereby requests confidential designation of two biogas purchase agreements entered into in October 2010 and November 2010 (“Agreements”). The Agreements are requested by Commission Staff as part of Staff’s efforts to verify renewable procurement claims by Noble Americans Energy Solutions, LLC (“Noble”), a registered energy service provider.

Specifically, the Commission’s Renewable Energy Office emailed Noble 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 Noble’s purchase of renewable energy credits from the Pastoria Energy Facility, a Calpine Corporation facility that uses pipeline biomethane to generate renewable energy credits. Staff has specifically requested that Noble provide “[c]ontracts relating to the transfer of the gas ownership from EIF KC Landfill Gas, LLC to Calpine Energy Services, LP.”³ In response to this request, Calpine hereby requests confidential designation of the Agreements.

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

Calpine requests confidential treatment of the two biogas purchase agreements executed in October and November 2010 between Calpine Energy Services, L.P. and EIF KC Landfill Gas, LLC, each provided 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. The disclosure of this information is also inconsistent with the confidential provisions of the biogas transaction agreements. However, Calpine 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 effective dates of the Agreements.

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 Bryan White and Greg Bass of Noble, May 16, 2012.

³ Email from James Haile of the Commission’s Renewable Energy Office to Greg Bass of Noble, May 31, 2012.

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

The terms and conditions of the biogas purchase agreements requested by Staff in furtherance of Noble's RPS procurement verification contain confidential information which is protected from disclosure by a confidentiality provision, and considered by the parties to be trade secret because it is information that is the result of confidential negotiations of commercial trades and services. Disclosure would also provide a competitive advantage to Calpine's competitors who do not know or use it.

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 Calpine believes that the aggregated information regarding quantities of biomethane delivered or contracted for may be disclosed. Other terms and conditions of the agreement are not capable of aggregation and are confidential.

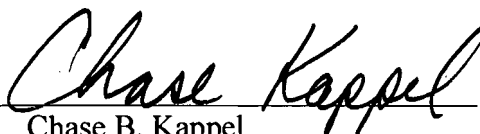
5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

The biogas purchase agreements are subject to confidentiality clauses protecting the terms and conditions of the agreements. The contents of the agreements are known only to Calpine and the counterparty, and Calpine 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 5, 2012

ELLISON, SCHNEIDER & HARRIS L.L.P.

By: 

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