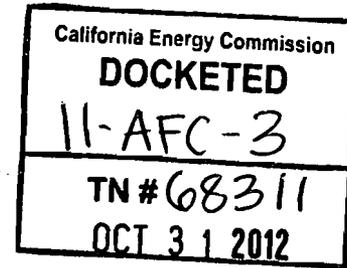


COMPLETED



Quail Brush Genco, LLC



A Project Company of Cogentrix Energy, LLC

9405 Arrowpoint Boulevard  
Charlotte, North Carolina 28273-8110  
(704) 525-3800  
(704) 525-9934 - Fax

October 31, 2012

Mr. Eric Solario, Project Manager  
Siting, Transmission and Environmental Protection Division  
California Energy Commission  
1516 Ninth Street, MS-2000  
Sacramento, CA 95814

**Re: Quail Brush Generation Project (11-AFC-03), Request for Confidential Treatment for Proposed Air Mitigation Plan**

On behalf of Quail Brush Genco, LLC (the "Applicant") and in support of proprietary and market-sensitive business information confidentiality, pursuant to 20 California Code of Regulations (CCR) §2505, please find enclosed one (1) copies of Proposed Air Mitigation Plan including Emission Reduction Credit (ERC) Data submitted in support of the associated AFC (Docket 11-AFC-3). The Project is a 100-megawatt peaker power plant to be located in Little Sycamore Canyon in the City of San Diego, San Diego County, California.

The Applicant requests that the proprietary data and information be designated confidential pursuant to 20 CCR § 2505. The information required by this regulatory section is outlined below.

- 20 CCR §2505 (1)(B): *Specifically indicate those parts of the record that should be kept confidential.*

Applicant requests confidential designation for the compilation of information relating to the Applicant's strategy and plans to secure ERCs as part of its efforts to mitigate the impacts of the proposed Project (the "Submitted Information"). The Submitted Information is proprietary and sensitive, and the public interest would best be served by not disclosing the information, as is further discussed below. The Applicant requests the Commission designate the Submitted Information as confidential in its entirety. This request applies to both the submitted digital copy and any subsequently produced hard copy versions of the Submitted Information.

20 CCR §2505 (1)(C): *State the length of time the record should be kept confidential, and justification for the length of time.*

Due to the proprietary and sensitive nature of the Submitted Information, the Applicant requests that the Submitted Information be kept confidential indefinitely. The Applicant anticipates that this information will remain of a confidential and proprietary nature through at least the construction, operation, and decommissioning periods of the proposed Project.

- *20 CCR §2505 (1)(D): Cite and discuss the provisions of the Public Records Act or other law that allow the Commission to keep the record confidential.*

### **Loss of Competitive Advantage**

The Commission's regulations provide for confidential treatment of information the disclosure of which "would . . . cause a loss of a competitive advantage" for the submitter. (See 20 CCR § 2505(a)(1)(D).)

Information associated with the Applicant's plans to acquire ERCs informs the business strategies of the Applicant and its corporate parent with regard to the proposed Project, as well as with regard to other power plant projects the corporate parent may develop in the future. Disclosure of the information would place the Applicant in a weakened negotiating position with third-party market participants, thereby causing a loss of competitive advantage. In addition, disclosure of this information would allow the Applicant's competitors and others to obtain proprietary information for free instead of paying the full market value of such information. Such entities could use the Applicant's proprietary information to develop their own business strategies, without the expenditure of time and resources that the Applicant has invested to develop its plans and strategy.

### **Public Interest**

Public Records Act section 6255 permits a public agency to withhold a record where "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Cal. Gov. Code § 6255.) The Commission should afford the Submitted Information confidential treatment pursuant to section 6255 because the public interest is best served in the instant case by keeping information relating to ERC prices, strategies, and plans confidential due to the highly competitive nature of the ERC market. If such information were made available to the general public, the Applicant and other market participants would be hindered in the process of negotiating within the ERC market.

- *20 CCR §2505 (1)(E): 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 the information cannot be disclosed even if aggregated or masked, the application shall justify why it cannot.*

The Applicant does not believe there is a feasible way to aggregate or mask the information that would not either render the information meaningless or disclose proprietary and market-sensitive information. The Submitted Information has already been separated from the Applicant's broader

business strategy developed for the proposed Project, and represents in its current form the maximum extent to which the information can be aggregated and masked.

- *20 CCR §2505 (1)(F): State 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 Submitted Information has never been released publicly and has only been made available to: (1) employees of the Applicant or its corporate parent, who have been instructed not to disclose the information, (2) the Applicant's consultants and counsel who have signed confidentiality agreements with the Applicant and/or have ethical obligations to maintain the confidentiality of all information, and (3) investors or potential investors of the Project or the Applicant and their agents, all of whom have signed confidentiality agreements with the Applicant.

- *20 CCR §2505 (1)(G): Include a statement executed by the person primarily responsible for preparing the application that information contained in this application is true, complete, and correct to the best of their knowledge. State whether the applicant is a company, firm, partnership, trust, corporation, or other business entity, or an organization or association.*

I certify under penalty of perjury that the information contained in this request for confidential designation is true, correct, and complete to the best of my knowledge. As Vice President of Environment, Health & Safety for the Applicant, I am authorized to make this certification and submit this request on behalf of the Applicant.

Sincerely,



C. Richard Neff  
Vice President – Environment, Health & Safety

Enclosure: Proposed Air Mitigation Plan for Quail Brush Genco, LLC

cc: Docket (11-AFC-3)