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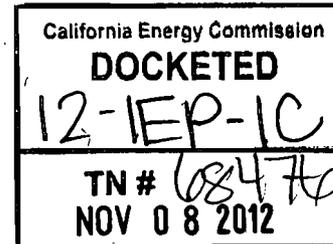
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COMPLETED

November 8, 2012



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

Re: Application for Confidential Designation: "Information Request for As-Built and As-Operating Project Costs for the Metcalf, Delta, Los Medanos, Gilroy, Los Esteros, Pastoria, King City, Sutter, and Otay Mesa Power Plants" (Docket 12-IEP-1C)

Dear Mr. Oglesby:

In response to the letter dated September 25, 2012, from Commissioner Carla Peterman, Lead Commissioner for the 2012 Integrated Energy Policy Report, and pursuant to Sections 2501 *et seq.*, of Title 20 of the California Code of Regulations, Calpine Corporation ("Applicant") hereby submits this "Application for Confidential Designation" for their responses to the "Information Request for As-Built and As-Operating Project Costs for the Metcalf, Delta, Los Medanos, Gilroy, Los Esteros, Pastoria, King City, Sutter, and Otay Mesa Power Plants."

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

Sincerely,

Jeffery D. Harris  
Ellison, Schneider & Harris L.L.P.  
Attorneys for the Applicant

## APPLICATION FOR CONFIDENTIAL DESIGNATION

### Information Request for As-Built and As-Operating Project Costs for the Metcalf, Delta, Los Medanos, Gilroy, Los Esteros, Pastoria, King City, Sutter, and Otay Mesa Power Plants

#### Docket 12-IEP-1C

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

Calpine Corporation ("Applicant") hereby submit this "Application for Confidential Designation" for their responses to the "Information Request for As-Built and As-Operating Project Costs for the Metcalf, Delta, Los Medanos, Gilroy, Los Esteros, Pastoria, King City, Sutter, and Otay Mesa Power Plants."

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

The Applicant's responses should be kept confidential indefinitely as they include commercially sensitive, project planning, project operations and project-specific design information that could disclose trade secret information regarding the facilities.

This information should be kept confidential because: (1) the information is not otherwise publicly available or readily discoverable in the form or detail provided at this time; (2) the information is market sensitive and constitutes trade secrets in terms of disclosing very recent commercial activities; and (3) the release of this information will result in loss of competitive advantage in the marketplaces relative to the Applicant's ability to negotiate future contracts for the purchase or sale of energy and/or capacity. The Applicant could suffer severe and irreparable injury if the information is disclosed publicly. Applicant could suffer injury if counter-parties and potential counter-parties were able to obtain this information and thus obtain a business advantage or otherwise cause a loss of a competitive advantage.

As discussed herein, the public interest in nondisclosure clearly outweighs the public interest in disclosure insofar as release of this economic information may directly harm existing and future commercial opportunities. (Gov't Code § 6255.)

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.*

The response of the Applicant contains trade secrets related to the design, construction, and operation of the facilities and commercially valuable information related to the sale and purchase of materials, fuel, and electricity.

The Public Records Act exempts “trade secrets” from public disclosure, including “any formula, plan, . . . production data, or compilation of information . . . , 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 . . . and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.” (Govt. Code § 6254.7(d).)

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 Commission’s regulations provide for information to be designated as confidential if it “contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage.” (20 CCR § 2505(a)(1)(D)).

The information identified above contains trade secrets and otherwise commercially sensitive data the disclosure of which would cause loss of a competitive advantage. As entities operating in the competitive and dynamic retail energy markets, the Applicant holds information on market positions in confidence. The materials identified above should be protected because the information is commercially sensitive and not publicly available. Moreover, this information can be used to directly or indirectly determine market positions to the detriment of the Applicant.

The information is commercially sensitive and constitutes a trade secret and is therefore exempt from disclosure. (Govt. Code § 6254.7(d); Evidence Code § 1060; Civil Code § 3426.1(d).) Moreover, the public interest in nondisclosure clearly outweighs the public interest in disclosure insofar as release of this economic information may directly harm existing and future commercial opportunities. (Gov’t Code § 6255.)

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.*

The Commission’s regulations define “Aggregated” to mean “that data is summed, averaged, or otherwise combined to limit the risk of disclosure of confidential information.” (20 CCR § 2503(b)(9).) The Commission’s regulations define “Masked” as follows: “‘Masked’ means, but is not limited to, customer, business, or cultural data that

has been modified to limit the risk of disclosure of confidential information. Methods of data modification may include, but are not limited to, suppression of data, rounding, swapping of values between like respondents, replacement of data with group averages, grouping of categories, and addition of random values.” (20 CCR §2503(b)(7).)

If the data requested is aggregated or masked with all data gathered from other parties subject to the Commission’s requests without any identifying information, then the Applicant believes that the aggregated information would not cause harm.

The Applicant has deep concerns about individual plant data not being either “aggregated” or “masked.” If, rather than being masked or aggregated, the data collected will be presented as line items with a single, non-aggregated value or other identifying information such as the location or size of the generating facilities, then the Applicant is concerned that market participants could “reverse engineer” individualized data to determine that the data was presented by the Applicant.

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 Applicant does not disclose the subject information to anyone other than its employees, attorneys and consultants working with the Applicant, except when disclosure is authorized or legally mandated. This information is not disclosed to persons employed by, or working for, the Applicant except on a confidential, “need-to-know” basis. The Applicant routinely keeps information of commercial value, like the subject information identified herein, confidential.

*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 this Application and Certification on behalf of the Applicant.*

Dated: November 8, 2012

ELLISON, SCHNEIDER & HARRIS L.L.P.

By: 

Jeffery D. Harris

Ellison, Schneider & Harris L.L.P.

Attorneys for the Applicant