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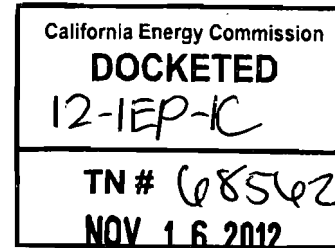


**High Desert Power Project, LLC**

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402-691-9500 | FAX: 402-691-9526

November 15, 2012

California Energy Commission  
Docket Office  
Attn: Docket 12-IEP-1c  
1516 Ninth Street, MS-4  
Sacramento, CA 95814



Subject: CEC September 25, 2012 Request for As-Operating Project Costs for High Desert Power Plant

Pursuant to the subject request, enclosed please find the following:

1. A printed copy of Attachment 1 (High Desert Power Plant (97-AFC-1C) As-Operating Information Request
2. A printed copy of Attachment 2 (Application for Confidential Designation).
3. Five CD's with the Items No. 1 and 2 above in electronic format.

Regards,

Randy Cullison  
Manager

enclosures

**APPLICATION FOR CONFIDENTIAL DESIGNATION**  
**(Cal. Code Regulations, Title 20, § 2505)**  
**DOCKET NUMBER: (12-IEP-1c)**

Applicant: High Desert Power Project, LLC (97-AFC-1C)

Address of Applicant: 19000 Perimeter Road, Victorville, CA 92394

**1. (a) Title, data, and description of the record:**

The California Energy Commission (Energy Commission) Information Request for As-Operating Project Costs (Information Request) for the High Desert Power Project, LLC (High Desert).

**(b) Specify the part(s) of the record for which you request confidential designation.**

High Desert is requesting confidential designation for the following information items: All information provided for Operating Cost Information Request Parameters numbers 1, 5, 7, 8 & 9.

**2. State and justify the length of time the Energy Commission should keep the record confidential.**

High Desert requests that the information provided be kept confidential for an initial period of five years to protect High Desert from third parties using the information to unfairly compete against High Desert when responding to solicitations by purchasers of wholesale energy, as described more fully in Section 3, below. High Desert reserves the right to request that following the initial period of five years, the confidentiality of the submitted information be renewed for additional five year periods as necessary to continue to prevent the harm to High Desert discussed in Section 3, below.

**3. (a) State the provision(s) of the Public Records Act (Gov. Code, § 6250 et seq.) or other law that allows the Energy Commission to keep the record confidential, and explain why the provision(s) applies to the record.**

High Desert asserts confidentiality pursuant to a number of arguments, including the trade secret privilege (Evidence Code § 1040 and Civil Code § 3426.1) and the balancing test provided under the California Public Records Act ("PRA") (Gov't Code § 6250 *et seq.*). High Desert is diligent in ensuring that the information provided in this Information Request is kept private and not legitimately acquired or duplicated by others. This information has not been made public by High Desert in any context and is made available only to (or produced by) its employees, and, if necessary, only to contractors that have

signed confidentiality and non-disclosure agreements or otherwise have a duty of confidentiality to High Desert to prevent the public disclosure of the information.

Operating Cost Information Request Parameter #1 – Total Annual Operating Costs

This information reflects private, internal business deliberations and decisions for High Desert. If publicly disclosed, High Desert's competitors can use this information to determine High Desert's operating cost per MWh of energy generated, severely impacting High Desert's ability to fairly compete in the market and negatively impacting High Desert's market position, asset value and investment strategy. Therefore, this information should be given confidential treatment as market sensitive and trade secret information.

The information meets the definition of "trade secret" under Civil Code § 3426.1(d). Public disclosure of this information would lead to the loss of actual or perceived economic value insofar as competitors or potential counterparties would gain insight into High Desert's operations and plans that those entities would not otherwise have absent the disclosure. Maintaining the confidentiality of this information cannot conceal any injustice or fraud. See *also*, Gov't Code § 6254.7(d) whereby the privilege protecting disclosure of trade secrets pertains to processes, plans or other information applicable to a service (here the production and delivery of energy and capacity) that has value or provides the holder of the trade secret an opportunity to obtain an advantage over business competitors.

The PRA provides a "catch all" provision at § 6255 whereby an agency can rightfully hold information in confidence where, as here, "that 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." (Gov't Code § 6255.) Entities like High Desert operate in a fiercely competitive arena where other entities—whether potential counterparties, competitors, vendors or suppliers—could use information made accessible through the Energy Commission's Information Request to gain insights that those members of the public would not otherwise have regarding High Desert's business practices, strategies, and costs. Such disclosure would directly harm High Desert directly or indirectly through the loss of competitive advantage. The public interest being served here is High Desert's voluntary submission of information to help the Energy Commission improve the accuracy of its *Levelized Cost of Generation Model*. No public interest is served by the disclosure of High Desert's confidential operating costs, which would discourage the voluntary submission of such information. Hence, the public interest is best served by not disclosing High Desert's confidential operating costs information, which clearly outweighs any public interest in disclosing this information.

Operating Cost Information Request Parameter #5 - Natural Gas Cost Annual Average Price

This information reflects private, internal business deliberations and decisions for High Desert that directly impact the cost of providing energy. If publicly disclosed, High Desert's competitors can use this information to determine High Desert-specific operating costs, negatively impacting High Desert's ability to fairly compete in the market and negatively impacting High Desert's market position. Therefore, this information should be given confidential treatment as market sensitive and trade secret information for the same legal and factual reasons described by High Desert in its request for confidentiality for *Operating Cost Information Request Parameter #1 – Total Annual Operating Costs*, above.

Operating Cost Information Request Parameter #7 - Staffing Cost

This information reflects private, internal business deliberations and decisions for High Desert. If publicly disclosed, High Desert's competitors can use this information to more accurately determine High Desert's operating costs, negatively impacting High Desert's ability to fairly compete in the market and negatively impacting High Desert's market position, asset value and investment strategy. Therefore, this information should be given confidential treatment as market sensitive and trade secret information for the same legal and factual reasons described by High Desert in its request for confidentiality for *Operating Cost Information Request Parameter #1 – Total Annual Operating Costs*, above.

Operating Cost Information Request Parameter #8 – Ongoing Operating Costs

This information reflects private, internal business deliberations and decisions for High Desert. If publicly disclosed, High Desert's competitors can use this information to more accurately determine High Desert's operating costs, negatively impacting High Desert's ability to fairly compete in the market and negatively impacting High Desert's market position, asset value and investment strategy. Therefore, this information should be given confidential treatment as market sensitive and trade secret information for the same legal and factual reasons described by High Desert in its request for confidentiality for *Operating Cost Information Request Parameter #1 – Total Annual Operating Costs*, above.

Operating Cost Information Request Parameter #9 – Estimate of Actual Annual Maintenance Costs

This information reflects private, internal business deliberations and decisions for High Desert. If publicly disclosed, High Desert's competitors can use this information to determine High Desert's operating costs, negatively impacting High Desert's ability to fairly compete in the market and negatively impacting High Desert's market position, asset value and investment strategy. Therefore, this information should be given confidential treatment as market sensitive and

trade secret information for the same legal and factual reasons described by High Desert in its request for confidentiality for *Operating Cost Information Request Parameter #1 – Total Annual Operating Costs*, above.

**(b) If the record contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please also state how it would be lost, the value of the information to the Applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.**

For the reasons described in Section 3(a) above, all the information for which High Desert requests confidentiality is market sensitive and trade secret information since it pertains to High Desert's ability to operate fairly in the market, maintain investment expectations and value and plan investment strategies. Public disclosure of this information would lead to the loss of actual or perceived economic value of High Desert insofar as competitors or potential counterparties would gain insight into High Desert's operations and plans that those entities would not otherwise have absent the disclosure.

The degree of detail provided in the confidential data could not be otherwise duplicated or acquired by public parties. High Desert is a privately owned business and the information requested to be kept confidential is not publicly available to third parties and cannot be legitimately acquired or duplicated unless with High Desert's agreement subject to strict confidentiality and nondisclosure agreements.

- 4. State whether the record may be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the Applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if it is aggregated or masked, explain why.**

Information provided by High Desert may be disclosed if aggregated with the same information from at least two other gas-fired combined cycle power generating plants. In no event should High Desert's identity be revealed.


As described in Section 3 above, the possibility that High Desert's competitors could identify High Desert's data and/or extract High Desert's specific operating cost information from aggregated data, allowing High Desert's competitors to harm High Desert's ability to fairly compete in the market and negatively impact High Desert's market position, asset value and investment strategy, is of such significant concern that High Desert's identity must always be masked and its data not aggregated, except as provided above.

5. **State how the record is kept confidential by the Applicant and whether it has ever been disclosed to a person other than an employee of the Applicant. If it has, explain the circumstances under which disclosure occurred.**

High Desert is a privately owned business and keeps records and data like that requested here confidential. High Desert is diligent in ensuring that the information provided in this Information Request is kept private and not disclosed to third parties without condition. To the extent High Desert agrees to disclose specific confidential information to a third party (i.e., to enable a contractor to perform work on the asset), High Desert diligently requires that all such third parties sign confidentiality and non-disclosure agreements before High Desert agrees to disclose the necessary specific confidential information.

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 that I am authorized to make the application and certification on behalf of the Applicant.

Dated: November 15, 2012

Signed: 

Name: Christopher A. Leitner  
Senior Vice President  
(Typed or Printed)

Title: \_\_\_\_\_  
(Typed or Printed)