

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

December 17, 2012

California Energy Commission

DOCKETED
12-IEP-1C

TN # 68893

DEC 17 2012

Mr. Don Burkard
Panoche Energy Center
43833 W. Panoche Road
Firebaugh, CA, 93622

RE: **Application for Confidentiality, As-Built and As-Operating Cost Information**
Panoche Energy Center
Docket No. 12-IEP-1C

Dear Mr. Burkard:

On November 5, 2012, Panoche Energy Center, filed an application for confidentiality seeking confidentiality for information related to the Panoche power plant's budgets and cost information for construction, operations and maintenance. The information is being provided in response to Commission information request under the Integrated Energy Policy Report process. Specifically the applicant requests confidentiality for all costs associated with operations and original construction which corresponds to the following sections on Attachment 1:

As-Operating

- #1) Total Annual Operating Costs
- #5) Natural Gas Average Annual Price (\$/MMBtu)
- #6) Water Supply Cost.
- #7) Staffing (average annual cost-2011 dollars)
- #8) Ongoing Operating Costs
- #9) Estimate of Actual Annual Maintenance Costs

As-Built

- #4) Total Capital Cost of Facility
- #5) Gas Turbine/Generator Cost
- #6) Steam Turbine/Generator Cost
- #7) Inlet Air Installed cost
- #8) Cooling Equipment cost
- #9) Water Treatment Facilities installed cost
- #10) Land Cost
- #11) Total Construction Cost
- #12) Cost of Site Preparation

- #13) Cost of Linear Connection Construction
- #14) Cost of Licensing/Permitting Project
- #15) Air Pollution Control Costs

While the original Application failed to fully explain the basis for confidentiality, through subsequent discussions with staff, the Applicant supplemented the Application and states that the budget information is confidential as a trade secret and as proprietary financial information. Specifically, the Applicant claims:

Operating and construction information provides cost data which could be used to define plant variable and fixed costs; this could impact the ability to secure future contracts for facility construction.

A properly filed Application for Confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "If the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [Energy] Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets and proprietary information. (Gov. Code, §§ 6254(k), 6254.7, 6254.15 Evid. Code, § 1060.) The California courts have traditionally used the following definition of trade secret:

a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, the application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to the applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application addresses each of these four requirements by stating the following:

"The specific nature of the advantage" -The Confidential Record represents a valuable compilation of cost data related to Project budgets for construction and operations which directly relate to the applicant's ability to competitively bid for power projects and negotiate PPAs.

"How the advantage would be lost" -Time and resources have been spent compiling the information within the Confidential Record and the value of the information would be significantly impaired if made available to the public as it would provide information useful to competitors, impacting the applicant's competitive advantage.

"The value of the information to the applicant" -The Confidential Record is valuable to the applicant because the use of the information to facilitate ongoing business activities. Releasing cost information would impact the ability of the applicant to bid on future projects because other entities would have information on the applicant's cost structure providing a distinct advantage when formulating a bid or negotiating PPAs. In addition operating costs would potentially disclose competitive efficiencies developed by the applicant.

"The ease or difficulty with which the information could be legitimately acquired or duplicated by others" -The Confidential Record is not readily available on the marketplace and can only be obtained with a significant investment of time and money. Thus, others could not easily acquire or duplicate this information.

In addition to trade secrets, Government Code section 6254.15 exempts from disclosure the following types of information:

Corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California.

Applicant has made a reasonable claim that the law allows the Energy Commission to keep the project's budgets for construction, operations and maintenance confidential on the grounds that it is proprietary and trade secret information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage.

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Applicant requests that the information be designated confidential until termination of the PPA in 2029.

Based on the above discussion, the Applicant's confidentiality application is granted. The budget data subject to this confidentiality designation will be kept confidential until the termination of the PPA in 2029.

Be advised that persons may petition to inspect or copy records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506. If you have any questions concerning this matter, please contact Jared Babula, Senior Staff Counsel, at (916) 651-1462.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Oglesby', with a long horizontal flourish extending to the right.

Robert P. Oglesby
Executive Director

cc: Docket Unit
Ivin Rhyne, Electricity Supply Analysis Division