

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

January 28, 2013

California Energy Commission

DOCKETED
12-IEP-1C

TN # 69308

JAN 28 2013

David R. Grant
La Paloma Generating Company, LLC
POB 175
McKittrick, CA, 93251

RE: **Application for Confidentiality, As-Operating cost Information**
La Paloma Generating Company, LLC
Docket No. 12-IEP-1C

Dear Mr. Grant:

The Energy Commission has received the application for confidentiality filed by La Paloma Generating Company, LLC. The application seeks confidentiality for information related to the La Paloma power plant's budget and cost information for operations and maintenance. The information is being provided in response to a Commission information request under the Integrated Energy Policy Report process. Specifically the applicant requests the following information listed on the Commission's Attachment 1 to be designated as confidential:

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

The application states that the budget information is confidential as a trade secret and as proprietary financial information. Specifically, the application claims:

As-Operating data provides cost data which could be used to define plant variable and fixed costs; this could impact the ability to bid or transact uncommitted merchant power competitively against other generators.

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.

As originally submitted the application did not provide enough information to support a designation of confidentiality based on trade secrets. Subsequently the applicant has supplemented the information and 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 budget for operations which directly relate to the applicant's ability to competitively bid for power projects, transact uncommitted merchant power and negotiate PPAs and other contracts.

"How the advantage would be lost" -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 and providing a competitive advantage to vendors and potential contracting partners who would know the plant's variable and fixed costs.

"The value of the information to the applicant" -The Confidential Record is valuable to the applicant because it evidences facility costs which if known to others could result in negative impacts to the applicant's business. 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.

David R. Grant
January 28, 2013
Page 3

"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.

In this case the facility is located in California and the cost information is being used to allow the Commission to better understand the costs of building, operating and potentially expanding power generating facilities in the state.

Applicant has made a reasonable claim that the law allows the Energy Commission to keep the project's budget for 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.

Based on the above discussion, the Applicant's confidentiality application is granted. The budget data subject to this confidentiality designation will be kept confidential for 7 years.

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,



Robert P. Oglesby
Executive Director

cc: Docket Unit
Ivin Rhyne