

CALIFORNIA ENERGY COMMISSION

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SACRAMENTO, CA 95814-5512



California Energy Commission

DOCKETED**12-IEP-1C**

TN # 69309

JAN 28 2013

January 28, 2013

Mr. Jesse Song
CalPeak Power LLC
c/o Tyr Energy Inc.
7500 College Blvd, Suite 400
Overland Park, KS 66210

RE: **Application for Confidentiality, As-Operating and As-Built cost
Information for CalPeak Border, CalPeak Enterprise and Starwood-
Midway power plants
Docket No. 12-IEP-1C**

Dear Mr. Song:

The Energy Commission is in receipt of an application for confidentiality submitted by, CalPeak Border, CalPeak Enterprise and Starwood Midway ("Applicants"). The application seeks confidentiality for information related to these facilities' budget and cost information for construction, operations and maintenance. The information is being provided in response to a Commission information request under the Integrated Energy Policy Report process. Specifically the applicants request confidentiality for all costs associated with construction and operation 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

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

As-Operating and As-Built data provides cost data which could be used to define plant variable and fixed costs; this could impact the ability to bid on commercial PPAs and merchant power contracts competitively against other generators.

The facilities will continue to seek opportunities for Power Purchase Agreements through both RFP bids and negotiation. The disclosure of these cost information will let potential counterparties know the Applicants' profit margin and put them in an unfavorable position. Cost information will provide a pricing guideline for competitors and off-takers. So they can either take advantage of it in the bidding process or use it to manipulate the negotiation.

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.

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In this case cost information has value because counter parties, vendors and competitors can use such information to their business advantage by manipulating any future negotiations with the Applicants. The cost information is not available to others and has been protected by the Applicants.

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.

Applicants have 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 Applicants, contains information that is not public, and has the potential for economic advantage.

Applicants request that the information be designated confidential for the useful life of the facilities which is 15 years with respect to CalPeak Border and Enterprise and 22 years for Starwood-Midway.

Based on the above discussion, the Applicants' confidentiality application is granted. The budget data subject to this confidentiality designation will be kept confidential for the time period described above.

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