

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
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May 22, 2013

California Energy Commission

**DOCKETED
13-IEP-1B**

TN 70933

MAY 22 2013

Mr. Randy Howard
Director, Power System Planning and Development Division
Los Angeles Department of Water and Power
111 North Hope Street, Room 921
Los Angeles, CA 90012

RE: Los Angeles Department of Water and Power's Application for Confidentiality for
the *2013 Integrated Energy Policy Report* Electricity Resource Plan Submission
Docket No. 13-IEP-1B

Dear Mr. Howard:

On May 3, 2013, the California Energy Commission (Energy Commission) received an application for confidentiality dated April 26, 2013 from the City of Los Angeles Department of Water and Power (LADWP). This application and a set of electricity resource plans were filed in the above-captioned Docket in connection with the *2013 Integrated Energy Policy Report*.

LADWP requests specific items of information submitted on one type of electricity supply form, Form S-5 Bilateral Contracts and Power Purchase Agreements, be held confidential. LADWP has identified nine contracts with confidential information. These contracts, identified on page 2 of the application, are named Linden, Milford I, Milford II, PPM Pebble Springs, PPM Wyoming, Willow Creek, Windy Point II, Contract B, and Contract C. For the first seven contracts named above, LADWP requests confidentiality for one item of information: Transmission Contingent & Path. For Linden, PPM Pebble Springs, Willow Creek, and Windy Point II, LADWP also requests confidentiality for a second item of information, Firming or Shaping. For Contracts B and C, LADWP requests confidentiality for the name of the Supplier/Seller, and Fuel Type. For Contract C, LADWP requests confidentiality for the Notes.

On March 19, 2009, LADWP provided S-5 forms for two bilateral contracts and requested confidentiality for the Contract Name and Fuel Type identified for each S-5 form. For this information, confidentiality was requested through the end of 2016. On April 23, 2009, Energy Commission Executive Director Melissa Jones granted confidentiality for this information through December 31, 2016. LADWP resubmitted these two S-5 forms to the Energy Commission on April 26, 2013, identified as Confidential Contract B and Confidential Contract C.

LADWP asserts that this information should be designated as confidential for the following reasons:

For the 9 supply contracts, the third-parties have identified confidential information pursuant to Gov. Code sections 6255, 6254(k), 6254.15, and Evidence Code sections 1060 and 1061. ...

The public interest of the LADWP in honoring its contract commitment to keep information confidential clearly outweighs the public interest in disclosure. Failure of the LADWP to comply with its contract commitments would not only expose the LADWP to a potential breach action but could also result in a refusal on the part of the counterparties to conduct business with the LADWP.

Section 6254(k) – These records are also exempted or prohibited from disclosure pursuant to state law, specifically Evidence Code Section 1040 as “official information.” The information was acquired in confidence from LADWP’s counterparties under the express terms of Par. 30 of the WSP agreement and such information is against the public interest because the express terms of the WSPP agreement require that the term of any transaction and all information exchanged between purchaser and seller remain confidential...

LADWP requests that the above information be kept confidential through the expiration date of each specific contract as indicated on each form and in a table shown with the confidentiality application. Eight of these contracts are scheduled to expire as soon as September 2013 (Confidential Contract C), and as late as April 2031 (Milford II). Terms of the Linden contract continue during the life of the wind project. This information to be kept confidential may be disclosed if it is aggregated with other information to the degree that it conceals the identified confidential information in the contracts.

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 California Public Records Act or other provision of law authorizes the [Energy] Commission to keep the record confidential.”

LADWP’s confidentiality application makes a reasonable claim to grant confidentiality for the contract information identified above. All categories of information as described above are granted confidentiality based on trade secret. This information and data could place LADWP at a competitive disadvantage if disclosed.

To prevent disclosure that would cause harm, confidential data that may be used in publicly available reports and presentations will be aggregated with resource plan

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information from other load serving entities in order to protect the specific information described herein to be kept confidential.

The identified confidential information contained on each of these nine S-5 supply forms, and on the summary Table S-5, will be kept confidential until the expiration date for each contract. If, in a future proceeding, LADWP submits this same confidential information to the Energy Commission, and if the terms of this grant of confidentiality are clearly and accurately presented, a new application for confidentiality will not be required.

Persons may petition to inspect or copy the 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. Be advised that an appeal of this decision must be filed within 14 days from the date of this decision. The procedures and criteria for appealing any part of this decision are set forth in the California Code of Regulations, Title 20, Section 2505.

If you have any questions concerning this matter, please contact Kerry Willis, Senior Staff Counsel, at (916) 654-3967.

Sincerely,

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

Robert P. Oglesby
Executive Director

cc: Docket Unit
Sylvia Bender