

CALIFORNIA ENERGY COMMISSION

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SACRAMENTO, CA 95814-5512



April 25, 2014

Jeffery Harris
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2600 Capitol Avenue, Suite 400
Sacramento, CA 95816

California Energy Commission

DOCKETED

14-HYDRO-01

TN 72968

APR 25 2014

**RE: Application for Confidentiality Responses to Questions on drought impacts
to Hydro Power production
Turlock Irrigation District
Docket No. 14-HYDRO-01**

Dear Mr. Harris:

Turlock Irrigation District (Applicant) filed an application for confidentiality seeking confidentiality for data submitted to the California Energy Commission (Energy Commission) in response to data requests. The data relates to hydro power and projected impacts of the California drought on the Applicant's procurement of hydro power.

Specifically, the application identifies the responses to all 11 questions as trade secrets and proprietary information which should be kept confidential.

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.

In this case Applicant purchases and sells large quantities of electrical energy on behalf of its customers. The marketplace for such purchases and sales is highly competitive. Information about anticipated procurement needs, if revealed, could place the Applicant at a competitive disadvantage when purchasing or selling energy. The Applicant derives value from the data not being known to the public. Further, public disclosure may cause electricity prices to increase which would harm the Applicant's customers. The Applicant has taken care to ensure the data has not been previously released to prevent potential market manipulation.

In addition the application also states: (1) the information is not otherwise publicly available or readily discoverable in the form or detail provided at this time; (2) the information is market sensitive and constitutes trade secrets in terms of disclosing commercial activities; and (3) the release of this information will result in loss of competitive advantage relative to the Applicant's ability to negotiate future contracts for the purchase or sale of energy and/or capacity and also its activities related to Greenhouse Gas allowance, compliance and procurement strategies, to the disadvantage of the Applicant's ratepayer-owners. The Applicant could suffer severe and irreparable injury if the information is disclosed publicly. The District's ratepayer-owners could suffer injury if counter-parties and potential counter-parties were able to obtain this information and thus obtain a business advantage or otherwise cause a loss of a competitive advantage.

Applicant has made a reasonable claim that the law allows the Energy Commission to keep the hydro related data confidential. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential to not only disadvantage the Applicant if the information is made public, but to also impact the market prices of energy.

Based on the above discussion, the Applicant's confidentiality application is granted. The data subject to this confidentiality designation will be kept confidential for 5 years, which is sufficient time to ensure the data will no longer be of commercial value.

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
Sylvia Bender
Ivin Rhyne