

APPLICATION FOR CONFIDENTIAL DESIGNATION**Information Request from Publicly Owned Electric Utility to Better Understand Reasonably Expected and Potential Hydroelectric Generation Supply Issues Related to the Statewide Drought****Docket No. 15-HYDRO-01**

1. *Specifically indicate those parts of the record which should be kept confidential.*

The Turlock Irrigation District (the “District,” or the “Applicant”) hereby submits this *Application for Confidential Designation* for responses to the requests made by Executive Director Robert Oglesby in his May 1, 2015, letter to the Mr. Casey Hashimoto, P.E., the District’s General Manager (the “Executive Director’s Information Request”).

The Executive Director’s Information Request seeks, in pertinent part, the following: “The California Energy Commission (Energy Commission) requests the assistance of your publicly owned electric utility to help us better understand reasonably expected and potential hydroelectric generation supply issues related to the statewide drought. The questions that follow are intended to assess the magnitude of severe drought conditions that create hardship related to electricity supply.”

The information requested would be transmitted as the District’s responses to the thirteen questions posed in the Executive Director’s Information Request. The Applicant has, among other things, marked all pages of the responses as “Confidential Business Information,” “Trade Secrets,” “Confidential and Proprietary,” and “Do Not Disclose Contents.” The entirety of the Applicant’s responses should be kept confidential.

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

This information should be kept confidential because: (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 in the marketplaces 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 (“GHG”) 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.

The Applicant's responses should be kept confidential for five years (60 months) as they include commercially sensitive planning, projections, and other information that could disclose trade secrets and confidential business information. The Applicant purchases and sells large quantities of electrical energy on behalf of its customers and those purchase and sales may be affected by drought-related impacts on western energy and water markets. The market place 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 ratepayer-owners. The Applicant has taken care to ensure the data has not been previously released to prevent potential market manipulation. The five year timeframe should be sufficient time for market conditions to change such that this then-historic information would be of little value from a commercial perspective. Moreover, since some of the information requested relates to GHG allowance, compliance and procurement strategies, the five year period requested will ensure that information about anticipated GHG-related allocations and related energy procurement needs, if revealed, will not place the Applicant at a competitive disadvantage when purchasing or selling GHG allowances, purchasing or selling energy, or otherwise affect the Applicant's ability to meet its GHG allowance, compliance and procurement obligations.

As discussed herein, the public interest in nondisclosure clearly outweighs the public interest in disclosure insofar as release of this economic information may directly harm existing and future commercial opportunities. (Gov't Code § 6255.)

3. *Cite and discuss (i) the provisions of the Public Records Act or other law which allow the commission to keep the record confidential and (ii) the public interest in nondisclosure of the record.*

The responses of the Applicant contain trade secrets including information related to the operation of the facilities and commercially valuable information related to strategies for the sale and purchase of materials, fuel, and electricity during a time of drought as well as GHG compliance strategies.

The Public Records Act exempts "trade secrets" from public disclosure, including "any formula, plan,...production data, or compilation of information..., which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service...and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it." (Govt. Code § 6254.7(d).)

The California Civil Code Section 3426.1(d) defines a “trade secret” as follows:

(d) “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The Commission’s regulations provide for information to be designated as confidential if it “contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage.” (20 CCR § 2505(a)(1)(D).).

The information identified above contains trade secrets and otherwise commercially sensitive data, the disclosure of which would cause loss of a competitive advantage. As a publicly owned utility operating in the competitive and dynamic retail energy and GHG markets, the Applicant holds information on market positions in confidence. The materials identified above should be protected because the information is commercially sensitive and not publicly available. Moreover, this information could be used to directly or indirectly determine market positions to the detriment of the Applicant.

The information is commercially sensitive and constitutes a trade secret and is therefore exempt from disclosure. (Govt. Code § 6254.7(d); Evidence Code § 1060; Civil Code § 3426.1(d).) Moreover, the public interest in nondisclosure clearly outweighs the public interest in disclosure insofar as release of this economic information may directly harm existing and future commercial opportunities. (Gov’t Code § 6255.)

4. *State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

The Commission’s regulations define “Aggregated” to mean “that data is summed, averaged, or otherwise combined to limit the risk of disclosure of confidential information.” (20 CCR §2503(b)(9).) The Commission’s regulations further define “Masked” as follows: “‘Masked’ means, but is not limited to, customer, business, or cultural data that has been modified to limit the risk of disclosure of confidential information. Methods of data modification may include, but are not limited to, suppression of data, rounding, swapping of values between like respondents, replacement of data with group averages, grouping of categories, and addition of random values.” (20 CCR §2503(b)(7).)

The Applicant has concerns about certain data being effectively “aggregated” or “masked.” If, for example, the data collected will be presented as a line item or line items with a single, non-aggregated value or other identifying information such as the location or size of the generating facilities, then the Applicant is concerned that market participant could “reverse engineer” individualized data to determine that the data was presented by the Applicant.

However, if the data requested is aggregated or masked with all data gathered from other parties subject to the Commission’s requests without any identifying information and without identifying the District, the District’s facilities, its contractual rights, duties, and obligations, or any strategies related to procurement of electricity or GHG allowance, compliance and procurement strategies during times of drought, then the Applicant believes that the aggregated information would not cause harm.¹

5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

The Applicant does not disclose the subject information to anyone other than its employees, attorneys and consultants working with the Applicant within the scope and course of their employment, except when disclosure is authorized or legally mandated. This information is not disclosed to persons employed by, or working for, the Applicant except on a confidential, “need-to-know” basis. The Applicant routinely keeps information of commercial value, like the subject information identified herein, confidential.

I certify under penalty of perjury that the information contained in this Application for Confidential Designation is true, correct, and complete to the best of my knowledge and belief. I am authorized to make this Application and Certification on behalf of the Applicant.

Dated: June 1, 2015

ELLISON, SCHNEIDER & HARRIS L.L.P.

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¹ Consistent with the requirements of Government Code Section 6254.5(e), the responses are submitted with the understanding and assurance that the Commission agrees to treat the disclosed material as confidential, that only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information, and that any information obtained by the agency shall only be used for purposes which are consistent with existing law. Further, consistent with the Commission’s prior practice, the Commission will timely contact the District should a request for the information be made pursuant to the California Public Records Act.