

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

August 25, 2005

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| DOCKET | |
| 01-AFC-17C | |
| DATE | AUG 25 2005 |
| RECD. | AUG 25 2005 |

Mr. Gregory L. Wheatland, Esq.
Attorney for Inland Empire Energy Center, LLC
Ellison, Schneider and Harris L. L. P.
2015 H Street
Sacramento, CA 95814-3109

RE: Application for Confidentiality: RECLAIM Trading Credit Call Option, Inland Empire Energy Center, Docket No. 01-AFC-17C

Dear Mr. Wheatland:

On July 26, 2005, Inland Empire Energy Center (IEEC) filed an application for confidentiality as part of Docket No. 01-AFC-17C. IEEC is seeking a designation of confidentiality for the "RECLAIM Trading Credit Call Option Agreement" (hereinafter the "Agreement") until December 15, 2005, at which time the Agreement closes.

IEEC's application states, in part:

The RECLAIM Trading Credit information is exempt from disclosure pursuant to Government Code §§ [sic] 6254.7. . . . In particular, subsection (f) of that statute states that '[d]ata used to calculate the costs of obtaining emissions offsets are not public records.' The sources and prices of IEEC, LLC's offsets are information the [Energy] Commission will use to calculate the costs and therefore the feasibility of obtaining offsets. . . . The public interest in nondisclosure of this emissions information is that disclosure would inhibit fair, arms-length negotiation of offset purchases. The market for offsets in the South Coast Area is highly competitive, as the supply of offsets available for purchase in the area in which the Inland Empire Energy Center is to be constructed is limited and there are other applicants competing for these offsets. In addition, by allowing this potential "gaming" of offset negotiations, disclosure would potentially raise the cost of the offsets which in turn may raise the price of electricity from the project to the public.

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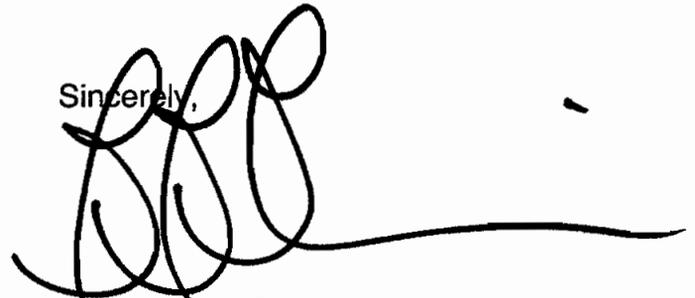
The California Public Records Act allows for non-disclosure of trade secrets. (Gov. Code, § 6254(k), Evid. Code, § 1060.) The California courts have traditionally used the following definition of trade secret:

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. Howie* (1971) 19 Cal.App.3d 194, 207-208, 96 Cal.Rptr. 493, 500-501, from the Restatement of Torts, vol. 4, sec. 757, comment b, p. 5.)

Your application makes a reasonable argument under the Energy Commission's regulations for classifying the Agreement as a trade secret, since it could provide IEEC's rivals with a competitive advantage in seeking available air offsets, as provided in the above standards. (Cal. Code Regs., tit. 20, § 2505.) Therefore, it is in the public interest that the Agreement be given confidentiality, so as not to interfere with IEEC's negotiations and bargaining strategy.

Therefore, I grant confidentiality to the above-referenced Agreement until December 15, 2005. If you have any further questions or concerns regarding this matter, please contact Fernando De Leon, Senior Staff Counsel at (916) 654-4873.

Sincerely,

A handwritten signature in black ink, consisting of several large, overlapping loops and a long horizontal stroke extending to the right.

B. B. BLEVINS
Executive Director

cc: Docket Unit