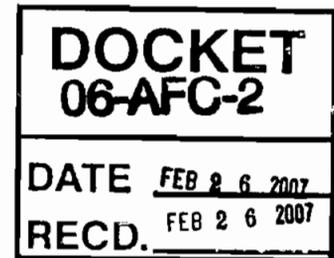


CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

February 26, 2007

Scott A. Galati
Galati & Blek
555 Capitol Mall, Suite 600
Sacramento, CA 95814RE: Application for Confidential Air Quality Status Reports 1 & 2
AES Highgrove Project, Docket No. 06-AFC-2

Dear Mr. Galati:

On June 27, 2006, and January 12, 2007, the AES Highgrove Project (Docket No. 06-AFC-2) (Highgrove) filed applications for confidential designation of Air Quality Status Reports 1 & 2. Highgrove's application of June 27 states, in part:

The Confidential Offset Strategy should be kept confidential until mutually binding contracts for all required offsets are signed. . . The information submitted is a special compilation developed by AES and provides AES with an advantage over potential competitors who have not developed such a compilation of information, offset holders, and offset pricing strategies (the material does not include air emissions data which is susceptible to public disclosure under Government Code Section 6254.7). In addition to the complete offset strategy, disclosure of potential sources of emissions offsets may hinder current negotiations.

Highgrove's application of January 12 states, in part:

Staff [California Energy Commission] submitted Data Requests, which required AES to provide monthly status reports relating to implementation of its Confidential Offset Strategy. AES has previously filed Confidential Air Quality Status Report No. 1 and requests that the attached Confidential Air Quality Status Report No. 2 be designated confidential pursuant to 20 CCR Section 2505 (b).

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.)

Highgrove's application makes a reasonable argument under the California Energy Commission's (Energy Commission) regulations for classifying the identity of potential offset sources as a trade secret, providing the applicant with a competitive advantage over rival developers, in accordance with the above standards. (Cal. Code Regs., tit. 20, § 2505.) Therefore, it is in the public interest that non-disclosure of potential offset sources, such as those identified in the above referenced applications be given confidentiality, so as not to interfere with offset negotiations.

However, as with all other similar requests, the term of confidentiality needs to be carefully specified to ensure conformance with the policies of both the Environmental Protection Agency (EPA) and the Energy Commission.

The identification and evaluation of offset sources is a critical component of the Energy Commission's licensing process, including our review of environmental impacts as the California Environmental Quality Act (CEQA) lead agency. The confidentiality of potential offset sources can only be maintained until that point when public participation in review of your proposed offsets becomes necessary. This is likely to occur when the air district issues its Preliminary Determination of Compliance (PDOC).

As interpreted by the EPA, the Clean Air Act requires "federally enforceable" emission reduction credit banking actions to be completed before the air district's PDOC is issued. (See 42 U.S.C. § 7503(a)(1); and EPA's June 19, 1998, letter in the High Desert Power Project, pages 6-7, Docket No. 97-AFC-1.) Specifically, EPA states that the offsets must be "identified, quantified, and secured" before issuance of the PDOC. (EPA's letter in High Desert Power Plant Project, Docket No. 97-AFC-1, at page 7.) Thus, EPA Region IX's clear policy is that an air district's PDOC should satisfy all the requirements of a Determination of Compliance, so it can be the subject of meaningful public review. (40 C.F.R. § 51.161.)

In addition, Public Resources Code section 25523 subdivision (d)(2) generally requires that complete emissions offsets be "identified" before the Energy Commission's licensing of a proposed facility. Therefore, CEQA, the Warren-Alquist Act (Pub. Resources Code, § 25000 et seq.), Energy Commission policy, and EPA's directives all lead to the conclusion that information used by Energy Commission staff has to be on the public record. Staff's first "use" of an applicant's proposed offset sources is thus normally in the Preliminary Staff Assessment (PSA), which reviews the air district's PDOC.

Consequently, following issuance of the PDOC, public workshops will be held involving the Energy Commission staff, the air district, plus other interested agencies, intervenors, and members of the public regarding all aspects of your proposed emission offset credits.

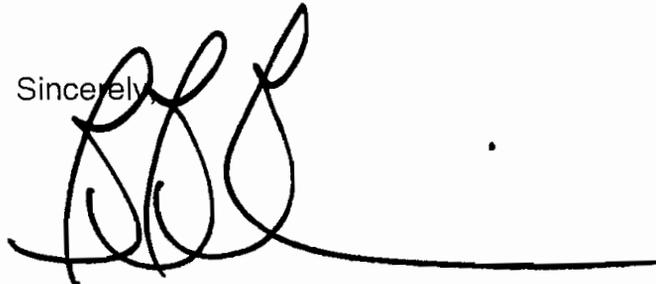
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Thus, detailed information on the source, ownership, and characteristics of the offsets proposed for your project needs to become public as part of a properly issued PDOC. I therefore grant **temporary confidentiality** to the Highgrove Project's potential offset sources until issuance of the PDOC. Accordingly, it is in your best interest that negotiations for offsets be completed by this time.

Any subsequent submittals related to potential offset sources can be deemed confidential for the temporary term specified in this letter without the need for a new application under California Code of Regulations, title 20, sections 2505 subdivisions (a)(1)(G) and 2505(a)(4), if you file a certification under penalty of perjury that the new information is substantially similar to that which is granted confidential status by this determination.

Persons may petition to inspect and/or copy those 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.

Sincerely,

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke at the bottom.

B. B. BLEVINS
Executive Director

cc: Project Manager, 06-AFC-2
Docket Unit