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DOCKET
07-AFC-6
DATE April 10 2009
RECD. April 14 2009

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April 10, 2009

VIA FEDERAL EXPRESS DELIVERY

Mr. Robert Kard, Executive Director
San Diego County Air Pollution Control District
10124 Old Grove Road
San Diego, CA 92131-1649

Re: San Diego County Air Pollution Control District Application Nos. 985745, 985747, and 985748 – Carlsbad Energy Center Project
Confidential Designation of Document

Dear Mr. Kard:

On behalf of Carlsbad Energy Center LLC, please find enclosed herewith confidential information related to Emission Reduction Credits ("ERCs"), which have been obtained for the Carlsbad Energy Center Project ("CECP") located in San Diego County. This confidential information ("Submitted Information") is presented in the enclosed sealed envelope.

Pursuant to San Diego County Air Pollution Control District (the "District") Rule 176(b), "any person… may label as 'trade secret' any part of those records which are entitled to confidentiality." The Submitted Information is a trade secret under California law and the District should therefore maintain its confidentiality pursuant to District Rules.

A trade secret is 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. (Civ. Code § 3426.1(d).) To determine whether certain information is a trade secret, one must evaluate whether the matter sought to be protected is information (1) which is valuable because it is unknown to others, and (2) which the owner has attempted to keep secret. (*Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1454.) A company's strategic plans and information related to competitive pricing are considered trade secrets by California courts. (*Id.* at 14545-1456.)

The Submitted Information is a trade secret under the above standards. Carlsbad Energy Center LLC's negotiation strategies regarding ERCs derive independent economic value from not being disclosed to the public or to competitors because of the competitive nature of the ERC market. The release of such information could hinder the process by which companies negotiate within the ERC market. Furthermore, Carlsbad Energy Center LLC has maintained the secrecy of the Submitted Information. Carlsbad Energy Center LLC is bound by contract to maintain the confidentiality of the Submitted Information unless written consent is given by the parties to the contract. To that end, Carlsbad Energy Center LLC obtained written consent from the involved parties to present the submitted information to the District in relation to CECP's pending air permit application. The Submitted Information has not been revealed to any other person, except to provide it to the California Energy Commission under confidential seal, accompanied by an application for confidential treatment pursuant to Title 20, California Code of Regulations section 2502. Given these facts, the Submitted Information is a trade secret and Carlsbad Energy Center LLC therefore seeks confidential treatment of the Submitted Information by the District pursuant to Rule 176(b).

In addition to District Rule 176(b), Government Code section 6254.15 exempts corporate proprietary information, including trade secrets, from disclosure under the California Public Records Act ("PRA"). Government Code section 6255 also permits public agencies to withhold any public record where the public interest served by not disclosing the record outweighs the public interest served by disclosure of the record. These provisions govern the District's treatment of the Submitted Information in relation to a PRA request. Both Government Code section 6254.15 and section 6255 allow the District to protect the Submitted Information from disclosure to the public. First, as a trade secret, the Submitted Information is protected from disclosure under section 6254.15. In addition, pursuant to section 6255, the public interest is best served by keeping information related to Carlsbad Energy Center LLC's negotiation strategies regarding ERCs confidential due to the competitive nature of the ERC market in California.

The Submitted Information, presented in a sealed envelope, may be opened only if the District determines it can be designated confidential pursuant to the aforementioned provisions. If the District determines the Submitted Information does not qualify for confidential treatment, Carlsbad Energy Center LLC requests that the District return the Submitted Information to my office in the sealed envelope.

Should you have any questions or concerns regarding this matter, please contact me directly at the number above.

Respectfully submitted,

Allison D. Cook

ADC:kjh

Enclosure

cc: George L. Piantka, Carlsbad Energy Center LLC
Tim E. Hemig, NRG Energy, West
John A. McKinsey, Stoel Rives LLP
Tom Andrews, Sierra Research
Mike Monasmith, California Energy Commission