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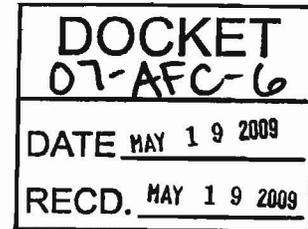
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May 19, 2009

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VIA PERSONAL DELIVERY

Mr. Mike Monasmith, Siting Project Manager  
California Energy Commission  
1516 Ninth Street, MS-15  
Sacramento, CA 95814



Re: **Carlsbad Energy Center Project (07-AFC-6)**  
**Notice of Submittal of Application for Designation of Confidential Records**

Dear Mr. Monasmith:

On April 9, 2009, Carlsbad Energy Center LLC ("Applicant") submitted to Executive Director Melissa Jones an Application for Designation of Confidential Records ("Original Application") related to the Carlsbad Energy Center Project ("CECP"). Subsequently, Ms. Jones denied the Original Application, but provided Applicant the opportunity to 1) submit a new application providing additional information to support the claim of confidentiality; or, 2) appeal the decision. Thus, Applicant has submitted a New Application to the Executive Director:

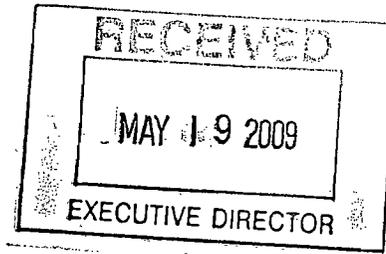
As with the Original Application, the confidential nature of the records prevents Applicant from disclosing the nature of the documents to the public, including the parties to the above-identified application for certification ("AFC") proceeding. Nevertheless, included with this notice is a copy of the New Application for the Energy Commission's AFC records and the same will be served on all parties to the AFC proceeding.

Should you have any questions regarding this matter, please do not hesitate to contact our office. Please feel free to speak with Melissa Foster or Allison Cook in my absence.

Respectfully submitted,

  
John A. McKinsey

JAM:kjh  
Enclosure  
cc: See attached Proof of Service



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May 19, 2009

ALLISON D. COOK  
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**VIA PERSONAL DELIVERY**

Ms. Melissa Jones, Executive Director  
California Energy Commission  
1516 Ninth Street, MS-39  
Sacramento, CA 95814

**Re: Carlsbad Energy Center Project (07-AFC-6)  
Application for Designation of Confidential Record**

Dear Ms. Jones:

On or about April 9, 2009, Carlsbad Energy Center LLC ("Applicant") submitted an Application for Designation of Confidential Record ("Original Application") with respect to information regarding the Carlsbad Energy Center Project ("CECP"). On or about May 9, 2009, our office received the Executive Director's May 8, 2009 decision denying Applicant's Original Application. That decision directed Applicant to either submit a new application or appeal the Executive Director's decision.

Pursuant to the May 8, 2009 decision, Applicant herein submits this new Application requesting confidential designation of a record under Title 20, California Code of Regulations, section 2505. Applicant understands that, pursuant to Title 20, California Code of Regulations, sections 2505(a)(2) and 2505 (a)(3)(B), the attached information will not be publicly disclosed while this Application, or any appeal of the California Energy Commission's ("CEC") determination on such Application, is pending.

Applicant provides the following in support of this Application:

(a) *Description/Separation of the Confidential Records*

The record, identified as "Enclosure A" submitted under seal with the Original Application on April 9, 2009 and marked "Confidential" (hereinafter "Submitted Information"), is the subject of



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this Application.<sup>1</sup> The Submitted Information is a confidential record related to Applicant's strategy and plans to secure Emission Reduction Credits ("ERCs"). The record constitutes trade secret information pursuant to California law, as is further discussed below.

*(b) Specific Indication of Those Parts of the Record to be Kept Confidential*

Applicant requests the Commission designate the Submitted Information as confidential in its entirety.

*(c) The Length of Time the Record Should be Kept Confidential*

Due to the proprietary and trade secret nature of the Submitted Information, Applicant requests the Submitted Information be kept confidential in perpetuity.

*(d) Provisions of Law Allowing the Commission to Keep the Documentation Confidential*

The Submitted Information is a trade secret under California law and the CEC should, therefore, maintain its confidentiality pursuant thereto.

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 1455-1456.)

The Submitted Information is a trade secret under the above standards. Applicant's negotiation strategies regarding ERCs derive independent economic value from not being disclosed to the

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<sup>1</sup> In an effort to avoid inadvertent disclosure of the record, Applicant has not resubmitted the confidential information with this Application. Should the Executive Director or Staff Counsel require a second copy of the record, Applicant will be happy to submit the information under seal.



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public or to competitors because of the competitive nature of the ERC market. The release of such information could hinder the process by which Applicant and other companies negotiate within the ERC market, particularly with regards to ERC pricing. Furthermore, Applicant has maintained the secrecy of the Submitted Information and 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, Applicant obtained written consent from the involved parties to present the Submitted Information to the CEC in relation to CECP's pending Application for Certification (07-AFC-6) ("AFC"), provided that the CEC uses the Submitted Information solely for its evaluation of the AFC and does not release the Submitted Information to the public. Given these facts, the Submitted Information is a trade secret and Applicant therefore seeks confidential treatment thereof.

In addition to the foregoing, 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 CEC's treatment of the Submitted Information in relation to a PRA request. Both Government Code section 6254.15 and section 6255 allow the CEC 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 Applicant'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 with Applicant's Original Application, may be opened only if the Executive Director determines it can be designated confidential pursuant to the aforementioned provisions. If the Executive Director determines the Submitted Information does not qualify for confidential treatment, Applicant requests the Submitted Information be returned to this office in the sealed envelope.

*(e) Aggregation and Masking of the Confidential Information*

The Submitted Information has been distilled from the broader business strategy that Applicant has developed for CECP and represents the maximum extent to which the information can be aggregated and masked.



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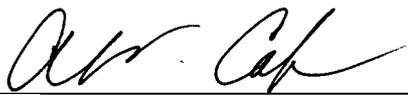
*(f) The Submitted Information is Presently Confidential*

The Submitted Information has been presented under seal to the San Diego Air Pollution Control District (the "District"). The Applicant submitted the same record to the District on April 10, 2009, and requested that the District maintain the confidentiality of the Submitted Information. On April 27, 2009, the District responded to Applicant's request and labeled the Submitted Information as trade secret pursuant District Rule 176(b). Besides the District, Applicant has not disclosed the Submitted Information to anyone other than its employees, affiliate employees, consultants, and attorneys assisting Applicant in its efforts related to the pending AFC. Furthermore, Applicant has not released any of the Submitted Information to any member of the public and has prohibited its employees, affiliate employees, consultants, and attorneys from releasing any portion of the Submitted Information to the public at any time.

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. As attorney for Carlsbad Energy Center LLC, I am authorized to make this certification and submit this Application on behalf of the Applicant.

Dated: May 19, 2009

Stoel Rives LLP

By:   
Allison D. Cook