UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Approved OMB 2020-0003
Approval expires August 31, 2020

Sent via email only

August 14, 2020

Julie K. Hardie
Vice President – Legal
Seismic Exchange Incorporated
4805 Westway Park Boulevard
Houston, TX 77041

Re: Request for Confidential Business Information Substantiation from an Affected Business

Dear Ms. Hardie:

On May 8, 2020, Clean Energy Systems ("CES") supplemented its February 18, 2020 Underground Injection Control (UIC) Class VI Pre-Construction permit application by adding twelve (12) figures. These figures contain seismic data (or derivatives) that were licensed by CES from Seismic Exchange Incorporated ("SEI"). SEI has claimed all of this information as confidential business information ("CBI"). The U.S. Environmental Protection Agency ("EPA" or "Agency") is seeking to determine the entitlement to confidentiality of the twelve (12) figures in EPA's possession.

The purpose of this letter is to notify you that the EPA Region 9, Office of the Regional Counsel will be making an advance confidentiality determination concerning the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that you claim to be CBI. Please note that if a page, document, group or class of documents claimed by you to be CBI contains a significant amount of information which our Regional Counsel's offices determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. Any information not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter may be disclosed without further notice to you.

For each item or class of information that you are claiming as CBI, please answer the following questions, giving as much detail as possible. Your comments in response to these questions will

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be used by the EPA to determine whether the information has been shown to be entitled to confidential treatment:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

7. For each item or category of information claimed as confidential, *explain with specificity* why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

   You are not required to respond to this question in light of the Supreme Court's decision in *Food Marketing Institute v. Argus Leader Media*, No. 18-481 (U.S. Supreme Court, June 24, 2019). As a result of that decision, EPA will not consider whether there is substantial competitive harm in evaluating your CBI claim.

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

Please note that *you bear the burden of substantiating your confidentiality and trade secret claim(s).* Generalized or conclusory statements will be given little or no weight in EPA's determination on the confidentiality of the information you claim to be CBI.

Your response to this letter must be sent via email to Ho.Yenhung@epa.gov and Albright.David@epa.gov by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments to this office, but the request must be made before the end of the 15-day period. Except in extraordinary circumstances, no extension will be approved. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "**CONFIDENTIAL**" or with a similar designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Should you have any questions concerning this matter, please call Calvin Ho at (415) 972-3262, or call me at (415) 972-3971.

Sincerely,

DAVID ALBRIGHT

Digitally signed by DAVID ALBRIGHT
Date: 2020.08.14 13:56:55 -07'00'

David Albright
Manager, Groundwater Protection Section

cc (via e-mail):

Rebecca Hollis, Clean Energy Systems
Jennifer Pierce, EPA Region 9, Office of the Regional Counsel