

Appendix D.

Discussion of Confidential Business Information

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At the request of the City, Valero has submitted data and information regarding the proposed project, including data and information regarding the past and anticipated future crude oil slate at the Valero Benicia Refinery. Pursuant to Public Resources Code Section 21160 and Government Code Section 6254.7(d), Valero has designated the following information to be confidential and has requested that it not be disclosed:

- The specific North American crudes that Valero plans to purchase and ship by rail;
- The properties (weight, sulfur content, vapor pressure, and acidity) of specific crudes delivered to Valero in the past;
- The properties (weight, sulfur content, vapor pressure, and acidity) of specific crude blends processed at the refinery;
- Data purchased by Valero showing the weight and sulfur content of specific crudes, including North American crudes;
- Data generated by Valero showing the weight and sulfur content of specific crudes, including North American crudes;
- Detailed information regarding the weight and sulfur content of crude blends suitable for processing at the Valero Benicia Refinery based on the refinery's unique configuration; and
- Detailed daily measurements of the weight and sulfur content of crude blends processed at the Valero Benicia Refinery in the past.

All of this information meets the definition of trade secret under CEQA and Government Code Section 6254.7. Information regarding the crudes that Valero plans to purchase, crudes that have been delivered to the refinery, and the properties and measurements of crude blends processed by the refinery or suitable for processing at the refinery, provides an insight into Valero's operating strategy that would not otherwise be publicly available. This information reveals Valero's preferred suppliers and purchasing strategy, and enables competitors, traders on Wall Street, or foreign governments to use disruptive competitive strategies or to gain an unfair competitive advantage. For example, competitors may lock in crudes targeted by Valero at favorable prices, thus making them unavailable to Valero. Or, competitors, traders, or foreign governments may bid up pricing on crudes targeted by Valero and therefore increase Valero's costs of doing business. Also, competitors may be able to lower their costs by developing purchasing strategies

similar to Valero. In addition, data purchased or generated by Valero showing the weight and sulfur content of specific crudes is often copyrighted. At a minimum, releasing this information allows other companies to obtain it without having to pay for it themselves. Competitors could also use this information to determine which crudes Valero is purchasing. (See Appendix K, McGovern Report).

For these and similar reasons, the U.S. Environmental Protection Agency (EPA) recently determined that detailed information about feedstocks, including crude oil delivered to a refinery, is confidential and entitled to protection under the greenhouse gas (GHG) reporting law. (40 C.F.R. Part 98; 75 Fed. Reg. 39,094 (July 7, 2010).) Under this law, petroleum refineries are required to submit annual GHG reports to the EPA. The Clean Air Act, however, directs the EPA to treat as confidential records, reports, or information that, if made public, would reveal methods or processes that are entitled to protection as trade secrets. (42 U.S.C. § 7414(c).) The EPA interprets this to mean that both trade secrets and confidential business information should be treated as confidential. (40 Fed. Reg. 21,987 (May 20, 1975).)

On this basis, the EPA concluded that several categories of information reported under the GHG reporting law should be treated as confidential. First, the EPA determined that information regarding the amounts and composition of raw materials used in the production process, excluding fuel, should be treated as confidential. The EPA determined that releasing this information could cause substantial harm to the reporting companies, including damage to their respective competitive and marketing strategies. For example, the EPA found that information about feedstock amounts and their composition could reveal a company's suppliers and sourcing strategies. Competitors could then use this information to create their own new strategies to compete for those feedstocks and to obtain similar production costs. The EPA also found that releasing information about feedstock consumption could allow competitors to determine the type of manufacturing processes used, or to infer the product mix of a facility, because manufacturing processes vary by the raw material consumed. And, competitors could use the combined information regarding raw material consumption and production quantities to reveal sensitive information such as operating efficiencies and to infer production costs and pricing structures. (75 Fed. Reg. 39,094, 39,116.)

Second, the EPA determined that production and throughput data that are not used as inputs to calculate annual GHG emissions should be treated as confidential, including the chemical characteristics of the products produced. The EPA found that releasing this information could substantially harm the competitive position of the reporting companies "by revealing confidential process information and operational and marketing strategies." Although this category focuses on the end result of the production process, it also protects information regarding feedstocks and raw materials used in the production process. The EPA reasoned that releasing information about the chemical characteristics of products could allow competitors to infer the types of feedstocks or raw materials used in the production process. "This may enable competitors to devise strategies to compete for resources and harm the competitive position of reporting entities by otherwise driving up the costs of materials used for production." (75 Fed. Reg. 39,094, 39,115.)

Other laws and regulations also recognize the confidentiality of information regarding crude oil feedstocks. For example, under the Petroleum Industry Information Reporting Act (Public Resources Code § 25350-25366), oil refiners are required to submit various reports to the California Energy Commission. (Public Resources Code § 25354.) The weekly report required by the Commission may include the amount of crude oil imported, including information identifying the source of the crude oil. (Public Resources Code § 25354(i)(2)(D).) The monthly report for each refinery requires, among other things, information regarding feedstock inputs. (Public Resources Code § 25354(a).) Any person required to submit this information, however, may request that specific information be kept confidential. (Public Resources Code § 25364(a).) In fact, “[i]nformation presented to the commission pursuant to Section 25354 shall be held in confidence by the commission or aggregated to the extent necessary to assure confidentiality if public disclosure of the specific information or data would result in unfair competitive disadvantage to the person supplying the information.” (Public Resources Code, § 25364(b).)

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