

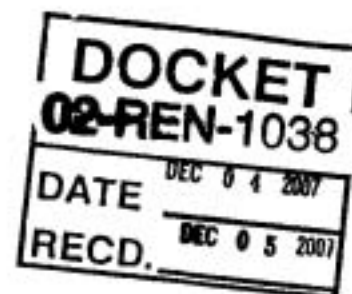
## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

December 4, 2007

Mr. Stephen Mullennix  
USGR Tracy GP, LLC  
2425 Olympic Blvd., Suite 6040W  
Santa Monica, CA 90404

RE: **Application for Confidentiality,  
Existing Renewable Facilities Program,  
Docket No. 02-REN-1038**



Dear Mr. Mullennix:

On November 13, 2007, Thermal Energy Development Partnership, LP (Thermal) filed an amended application for confidentiality in the above-captioned Docket. The application seeks confidentiality for Thermal's letter to Jason Orta dated October 26, 2007 (hereinafter "Letter"). Thermal is requesting that this information be kept confidential for 5 years because the Letter "providing additional information to justify the target price requested by the Energy Commission contains information that is commercially sensitive, which the applicant considers to be confidential." Thermal states, in part:

If the confidential information became publicly available, it would give others in the independent energy businesses and potential counterparties to future energy-take off opportunities an unfair advantage by knowing what Applicant's cost competitive position by its provisions of the maintenance costs.

A properly filed application for confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [Energy] Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1040.) 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. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

Thermal's confidentiality application makes a reasonable claim to grant confidentiality to most of the information contained the Letter. However, information concerning the requested specific target price in cents/kWh is not confidential (see page 2, paragraph 2, second sentence). This is information the Energy Commission must disclose. Moreover, the Energy Commission has concluded that disclosing this information would not harm Thermal.

The remainder of the Letter contains information that is exempt from public disclosure since it constitutes business proprietary information that could harm Thermal's overall economic interests. (Gov. Code, § 6254 (k).) This information will not be aggregated or masked. Accordingly, this data is granted confidentiality until December 31, 2011.

Persons may petition to inspect or copy the 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.

Any appeal of my decision to grant confidentiality must be filed within fourteen days from the date of this decision. The procedures and criteria for appealing any part of this decision are set forth in the California Code of Regulations, title 20, section 2505. If you have any questions concerning this matter, please contact Fernando De Leon, Senior Staff Counsel, at (916) 654-4873.

Sincerely,



MELISSA JONES  
Acting Executive Director

cc: Docket Unit  
Energy Commission Project Manager