

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

November 19, 2007

Mr. Mike Norris
Pacific Ultrapower Chinese Station
8755 Enterprise Drive
Jamestown, CA 95327

DOCKET	
02-REN-1038	
DATE	NOV 19 2007
RECD.	NOV 20 2007

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

Dear Mr. Norris:

On October 26, 2007, Pacific Ultrapower Chinese Station (Pacific Chinese) filed an amended application for confidentiality in the above-captioned Docket. The application seeks confidentiality for Pacific Chinese's "Wood Group Operating Statistics Summary, Justification Letter, 10/12/07" (hereinafter "Letter"). Pacific Chinese is requesting that this information be kept confidential "for the next 10 years, because the amounts provided contain confidential market and operating information." Pacific Chinese states, in part:

All the documents and supporting information provided should not be disclosed because it contains trade secrets or its disclosure would otherwise cause loss of competitive advantage. . . . The overall concept for requesting confidentiality is based on the fact that the principal trade secrets of the facility include everything related to our marginal operating costs and our fuel costs, two values that are closely related. Each Biomass plant competes for fuel and all of our competitors would like to know how much we pay for fuel.

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.)

Pacific Chinese's confidentiality application makes a reasonable claim to grant confidentiality to some of the information contained the Letter. However, the first and fourth sentences of paragraph two are not confidential. This data can either be derived from existing public information or is information that the Energy Commission must disclose to the Legislature. The Energy Commission has concluded that disclosing this information would not harm Pacific Chinese.

The rest of the Letter contains information that is exempt from public disclosure since it constitutes a trade secret, and could harm Pacific Chinese's overall proprietary business interests. (Gov. Code, § 6254 (k).) This information will not be aggregated or masked. Accordingly, this data is granted confidentiality until December 31, 2010.

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,

B. B. BLEVINS
Executive Director

cc: Docket Unit
Energy Commission Project Manager