

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

January 23, 2013

California Energy Commission

DOCKETED
12-IEP-1C

TN # 69217

JAN. 23 2013

Mr. Mark Kehoe
GWF Power Systems
4300 Railroad Ave.
Pittsburg, CA 94565

RE: **Application for Confidentiality, As-Operating Information**
Hanford, Henrietta and Tracy Power Plants
Docket No. 12-IEP-1C

Dear Mr. Kehoe:

On November 26, 2012, GWF Power Systems, filed an application for confidentiality seeking confidentiality for information related to the Hanford Energy Park Peaker, Henrietta Peaker Plant and Tracy Peaker Plant plants' budget and cost information for operations and maintenance. The information is being provided in response to a Commission information request under the Integrated Energy Policy Report process. Specifically, the applicant requests confidentiality for all costs associated with operations which corresponds to the following sections on Attachment 1:

As-Operating:

- #1) Total Annual Operating Costs
- #5) Natural Gas Average Annual Price (\$/MMBtu)
- #6) Water Supply Cost
- #7) Staffing (average annual cost-2011 dollars)
- #8) Ongoing Operating Costs
- #9) Estimate of Actual Annual Maintenance Costs
- #10) Fixed Versus variable O&M Costs Definition

The application states the budget information is confidential as a trade secret and as proprietary financial information. Specifically, the Applicant claims:

The information derives potential independent economic value from not being known to the public or competitors. Disclosure of this information would cause loss of competitive advantage for the company because competitors could attempt to determine, among other things, the price of contract the facilities have in place for items such as maintenance, personnel and water supplies.

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 and proprietary information. (Gov. Code, §§ 6254(k), 6254.7, 6254.15 Evid. Code, § 1060.) 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.)

California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, the application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to the applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application addresses each of these four requirements by stating the following:

"The specific nature of the advantage" - The Confidential Record represents a valuable compilation of cost data related to operation costs which directly relate to the applicant's ability to operate the facilities.

"How the advantage would be lost" - Disclosure of this information would cause a loss of competitive advantage for the company because competitors could attempt to determine, among other things, the price of contracts the facilities have in place. With this knowledge competitors could attempt to interfere with relationships with vendors or model their operations in order to obtain a competitive advantage.

"The value of the information to the applicant" - The Confidential Record is valuable to the applicant because it represents an important part of the way the applicant conducts its business. In addition operating costs would potentially disclose competitive efficiencies developed by the applicant.

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"The ease or difficulty with which the information could be legitimately acquired or duplicated by others" - The Confidential Record is not readily available on the marketplace and can only be obtained with a significant investment of time and money. Thus, others could not easily acquire or duplicate this information.

In addition to trade secrets, Government Code section 6254.15 exempts from disclosure the following types of information:

Corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California.

Applicant has made a reasonable claim that the law allows the Energy Commission to keep the project's budgets for construction, operations and maintenance confidential on the grounds that it is proprietary and trade secret information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage.

Applicant requests that the information be designated confidential for fifteen years.

Based on the above discussion, the Applicant's confidentiality application is granted. The budget data subject to this confidentiality designation will be kept confidential for fifteen years.

Be advised that persons may petition to inspect or copy 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. If you have any questions concerning this matter, please contact Jared Babula, Senior Staff Counsel, at (916) 651-1462.

Sincerely,



Robert P. Oglesby
Executive Director

cc: Docket Unit
Ivin Rhyne