

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

June 19, 2007

Mr. Douglas S. Tominson  
Plant Manager  
Burney Forest Power  
37445-B highway 299E  
Burney, CA 96013

<b>DOCKET</b> <b>02-REN-1038</b>	
<b>DATE</b>	<b>JUN 19 2007</b>
<b>RECD.</b>	<b>JUN 19 2007</b>

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

Dear Mr. Tominson:

On May 21, 2007, Burney Forest Power ("Burney") filed an application for confidentiality in the above-captioned Docket. The application seeks confidentiality for some of the information contained in Burney's application for funding in the Existing Renewables Facilities program. Burney seeks confidentiality for the following information:

All documents to the information request contained in Attachment B, related to Fuel cost and fuel quantity.

Burney bases the request upon the following:

Title 20, California Code of Regulations, Section 2505 – Unfair market advantage by competitors of this facility. . . Competitive advantage would be lost as a result of disclosure of fuel pricing to others bidding on the same fuel. If our competitors know the prices we are offering, they will be able to bid slightly higher to obtain the fuel and damaging the free market.

Burney goes on to state:

The Energy Commission should keep this information confidential for at least three years to reduce the possibility that competitors will use this information to manipulate the wood fuel market and to prevent unfair advantage in the wood fuel market in Northern California.

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:

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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. . . .

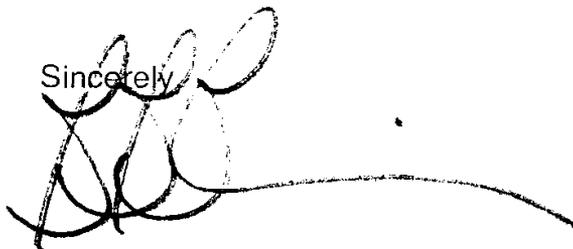
(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

Burney's May 21, 2007, confidentiality application makes a reasonable claim to grant confidentiality to the forecasted and estimated information as itemized above. This information is exempt from public disclosure since it constitutes a trade secret, and could harm Burney's proprietary business interests. (Gov. Code, § 6254 (k).) This information may be aggregated and released to the public, but only if its confidentiality is protected. Accordingly, the data identified above is granted confidentiality until December 31, 2010.

However, information such as actual generating capacity will not be granted confidentiality since this information will be provided to the California Legislature and form the basis for awarding possible energy incentive payments to Burney. Likewise, energy price information and actual historical information will not be granted confidentiality.

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. An 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 Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. B. Blevins', with a long horizontal flourish extending to the right.

B. B. BLEVINS  
Executive Director

cc: Docket Unit  
Energy Commission Project Manager