

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

July 9, 2007

Ms. Dina Del Dotto
Business Manager
Covanta Biomass Facilities
Burney Mountain Power
P.O. Drawer 2375
Burney, CA 96013

DOCKET	
02-REN-1038	
DATE	JUL 09 2007
RECD.	JUL 13 2007

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

Dear Ms. Del Dotto:

On June 11, 2007, Burney Mountain 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 the documents and supporting information provided in response to question 1) b) i.- iii. under "Justification for Target Prices Requested" . . . because it contains trade secrets or its disclosure would otherwise cause loss of competitive advantage. . . . The two estimates requested under 2) in "Justification for Target Prices Requested" should not be disclosed because it contains trade secrets or its disclosure would otherwise cause loss of competitive advantage. . . . the detailed plan under "Becoming Competitive and Self-Sustaining by December 31, 2011" is confidential since it relates to marginal operating costs.

Burney bases the request upon the following:

According to Title 20, California Code of Regulations, Section 2505 . . . the principal trade secrets of (Burney) include everything relating to our marginal operating costs and our fuel costs, two values that are closely related. Our plant experiences competition with other operating biomass plants. Both these competitors would like to know what we pay for fuel. . . There are a number of approaches to determining a plant's fuel costs by competitors, including knowledge of additional generation that would be made by a certain subsidy amount, a value that is provided in the accompanying documents.

Burney goes on to state:

All these documents and supporting information should remain confidential for the next 10 years, because these forms contain confidential market and operating information.

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.)

Burney's June 11, 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 only 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.

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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, consisting of several loops and a long horizontal stroke extending to the right.

B. B. BLEVINS
Executive Director

cc: Docket Unit
Energy Commission Project Manager