

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

September 21, 2007

Mr. Christopher J. Warner
Law Department
Pacific Gas & Electric Company
P.O. Box 7442
San Francisco, CA 94120-7442

RE: Application for Confidentiality
SEP Application Data Response,
Docket No. 03-RPS-1078

DOCKET 03-RPS-1078
DATE SEP 21 2007
RECD. SEP 21 2007

Dear Mr. Warner:

On August 20, 2007, Pacific Gas and Electric Company (PG&E) filed an application for confidential designation of documents provided in response to its application for supplemental energy payment (SEP) funds for two parties with whom PG&E is developing renewable contracts, CalREW-1 and Green Volts, Inc. PG&E's application states, in part:

PG&E is seeking confidential designation for information that is substantially similar to information that was previously deemed confidential by the [Energy] Commission and under the same terms and conditions provided for that prior information. . . . The only type of information in this application that was not included in the categories deemed confidential in the Executive Director's March 5, 2007, letter, is the information entitled "**SEP 10-20 year Equivalent Calculation**" **Excel Worksheet** discussed in the table below. PG&E believes this information is substantially similar to the information deemed confidential in the March 5 letter and therefore should be designated as such.

PG&E seeks confidential designation . . . "CEC-SEP-1 Bid Data Request, Bids below the MPR".

PG&E seeks confidential designation . . . "CEC-SEP-2 Bid Data Request, Bids above the MPR".

PG&E seeks confidential designation . . . CEC-SEP-3 (Utility):

1. Line (6) Contract Price
2. Line (8) Supplemental Information . . .
 - Advice Letter No. 3074-E Appendix A – Overview of 2004-2006 Solicitation Bids
 - Advice Letter No. 3074-E Appendix B – 2006 Bid Evaluations;
 - Advice Letter No. 3074-E Appendix C - Independent Evaluator Report;

- Advice Letter No. 3074-E Appendix D-1, D-2 and D-3 - Contract Summaries and MPR/SEP Calculations;
 - Advice Letter No. 3074-E Appendix E-1, E-2 and E-3 – Project Viability;
 - Advice Letter No. 3074-E Appendix F – Project' Contribution Toward RPS Goals;
 - Advice Letter No. 3074-E Appendix G-1, G-2 and G-3 – Power Purchase Agreements;
 - Advice Letter No. 3074-E Appendix H-1, H-2, H-3 and H-4 – Standard Terms and Conditions Comparison; and
 - Advice Letter No. 3074-E attached CD-ROM, dated June 27, 2007, containing “Contracts for Procurement of Renewable Energy Resources Resulting from PG&E’s 2006 RPS Solicitation.
3. Both the CEC’s “SEP/MPR” worksheet and the CEC’s “SEP 10-20 year Equivalent Calculation” . . .

The California Public Records Act allows for non-disclosure of trade secrets. (Gov. Code, § 6254(k), 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. Howie* (1971) 19 Cal.App.3d 194, 207-208, 96 Cal.Rptr. 493, 500-501, from the Restatement of Torts, vol. 4, sec. 757, comment b, p. 5.)

In addition, the California Code of Regulations title 20 section 2505 (a)(4) provides, in part:

If an applicant is seeking a confidential designation for information that is substantially similar to information that was previously deemed confidential by the Commission pursuant to Section 2508, or for which an application for confidential designation was granted by the Executive Director pursuant to subdivision (a)(3)(A) of this section, the new application need contain only a certification, executed under penalty of perjury, stating that the information submitted is substantially similar to the previously submitted information and that all the facts and circumstances relevant to confidentiality remain unchanged. . . .

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The California Energy Commission (Energy Commission) has reviewed the materials submitted by PG&E and determined that Appendices A, B, and C contain information that is not substantially similar to information previously deemed confidential. Therefore, the Energy Commission is requesting that PG&E provide additional justification to support its claim that this information is confidential. PG&E will have 14 days, from the date of this letter, to submit a new application for confidentiality. Once the Energy Commission has received this additional information, we can evaluate the entire application for confidentiality. Be advised that failure to submit a new application could result in your submitted information being publicly available.

If you have any questions concerning this matter, please contact Fernando De Leon, Senior Staff Counsel, at (916) 654-4873.

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: Project Manager, 03-RPS-1078
Docket Unit