

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

January 7, 2009

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

DOCKET	
02-REN-1038	
DATE	JAN 07 2009
RECD.	JAN 08 2009

**RE: Existing Renewable Facilities Application
Application for Confidentiality
Pacific-Ultrapower Chinese Station
Docket No. 02-REN-1038**

Dear Mr. Norris:

On December 15, 2008, Covanta Energy (Covanta) filed an Application for Confidentiality in the Docket No. 02-REN-1038 on behalf of Pacific-Ultrapower Chinese Station (Pacific-Ultrapower).¹ The Application seeks confidentiality for information related to the Funding Eligibility Existing newable Facilities Program Application. Specifically, the Application seeks confidentiality for forms CEC-1250E-1 (Application for Funding Eligibility) and CEC-1250E-3 (Authorized Signatures Form) of the funding application and all supporting attachments and materials. Pacific-Ultrapower requests that the information be kept confidential until 2018, "because the amounts provided contain confidential market and operating information."

Pacific-Ultrapower bases its request on Section 6254.7(d) of the Public Records Act (Gov. Code, § 6254.7(d)). That section defines "Trade Secrets" as:

any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

¹ Pacific-Ultrapower filed an initial application in November, 2008, which was rejected for procedural reasons.

Pacific-Ultrapower states that the information provided is trade secret because:

. . . the principal trade secrets of the facility include everything relating to our production data, operating plan, marginal operating costs, and fuel costs. This information is only available to certain individuals in the company. If this information was available to the public, it would give its user an opportunity to obtain a business advantage over our facility. . . . If competitors had this information, they could out bid us on fuel pricing. There is a shortage of fuel in this geographic location. If the facility is unable to procure enough economical fuel the facility would be forced to curtail.

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.

As to some of the items in the Funding Eligibility Existing Renewable Facilities Program Application, Pacific-Ultrapower's confidentiality application makes a reasonable claim of confidentiality. Specifically, I have determined that the information submitted in response to the following item numbers in form CEC-1250E-1 of the application, and any attachments submitted in support of Pacific-Ultrapower's response, are confidential:

- Line 22 – Total State Tax Credits Received by Facility
- Line 23 – Total Federal Tax Credits Received by Facility
- Line 24 – market Value of the Facility
- Line 25 – Explanation of how incentive payments will allow the facility to become cost-competitive by the end of the 2011 calendar year
- Line 28 – Estimate of the target price needed in order to ensure the continued operation of the facility through the application year
- Line 29 – Estimate of the production incentive cap needed

This information above is exempt from public disclosure since it constitutes a trade secret, and could harm Pacific-Ultrapower's proprietary business interests. Gov. Code § 6254 (k). Accordingly, the data identified above is granted confidentiality until December 31, 2012.

With regards to the remaining information in form CEC-1250E-1, and all of the information in CEC-1250E-3, the request is denied. The remaining information in the application is information which is either already public, will become public due to the Energy Commission's legal reporting requirements, or is information which does not fall under the Public Records Act's definition of trade secrets.

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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. Please note that subsequently submitted information can be deemed confidential as specified in this letter without the need for a new application if you file a certification under penalty of perjury that the new information is substantially similar to the information granted confidentiality by this determination. California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4).

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 "Melissa Jones", enclosed within a large, loopy circular flourish.

MELISSA JONES
Executive Director

cc: Docket Unit
Jason Orta, Energy Efficiency & Renewables Division