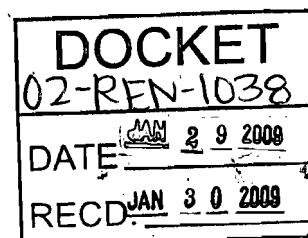


CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

January 29, 2009

John Richardson
Madera Power, LLC
11427 Firebaugh Blvd.
Firebaugh, CA 93622

RE: **Existing Renewable Facilities Application**
Application for Confidentiality
Madera Power LLC
Docket No. 02-REN-1038

Dear Mr. Richardson:

On October 23, 2008, Madera Power, LLC, filed an Application for Confidentiality for information related to the Funding Eligibility Existing Renewable Facilities Program Application (Docket No.02-REN-1038). The Application was denied, and a new Application for Confidentiality was received on December 31, 2008. The new application seeks confidentiality for information related to contract terms between Madera Power, LLC, and PG&E. Additionally, the Application seeks confidentiality for responses to Questions 25, 28, and 29 of the Funding Eligibility for Existing Renewable Facilities Program Application.

You state that:

Our contract with PG&E binds us to hold confidential all aspects of our contract. A breach of this type could result in a termination of the contract at the request of PG&E. In such instance we would forfeit a significant deposit and be forced to sell our electricity on the open market. If that were to occur it would cause a significant loss of a competitive advantage and revenue.

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.)

While a breach of contract is not a legally recognized basis for designating records as confidential, you have made a reasonable claim that the data contains trade secrets, as it contains information used in business that give Madera Power an opportunity to obtain an advantage over competitors. As such, the responses to Questions 25, 28, and 29 of the Program Application will be kept confidential for five years, until December 31, 2013.

However, as to your request to hold "all information related to contract terms between Madera Power LLC and PG&E," some of this information, such as average monthly prices, will be aggregated in order to support any subsequent grant amounts the Commission issues. While the exact terms of the contract will be held confidential, the grant amounts are tied to some of the terms of Madera Power's contract with PG&E. The Commission is required to disclose the amounts of any grants issued pursuant to the Existing Renewable Facilities Program.

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.

Any 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,



MELISSA JONES
Executive Director

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