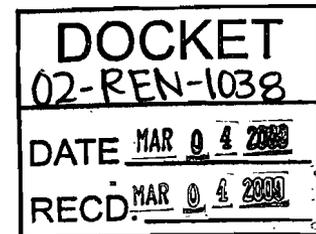


CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

March 4, 2009



John Richardson
Community Renewable Energy Services
Dinuba Energy
P.O. Box 1063
Sun Valley, CA 91352

RE: **Existing Renewable Facilities Application
Application for Confidentiality
Community Renewable Energy Services, dba Dinuba Energy
Docket No. 02-REN-1038**

Dear Mr. Richardson:

On February 9, 2009, Community Renewable Energy Services (CRES) filed an Application for Confidentiality in the Docket No. 02-REN-1038 on behalf of Dinuba Energy. The Application seeks confidentiality for information related to the Funding Eligibility of Existing Renewable Facilities Program. Specifically, the Application seeks confidentiality for responses to questions 25, 28, and 29 of the funding eligibility application (Form CEC-1250E-1). Those questions relate to the following:

- 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

CRES also requests that the terms of the contract between CRES and PG&E be designated as confidential. The application requests that the information be kept confidential for 3 years after the term of CRES's contract with PG&E expires, until 2031.

CRES bases its request on the claim that CRES's contract with PG&E contains a provision requiring that the terms of the contract be kept in confidence, and that public disclosure may place CRES in breach of that contract. CRES goes on to state:

Accordingly, disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the

information that outweighs the necessity for disclosure in the interest of justice. . . . Our contract with PG&E binds us to maintain confidentiality of 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 this 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, (CCR) 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."

CRES's application is made on the basis that disclosure of the information would be a breach of CRES's contract with PG&E. However, the application does not cite or discuss law which would authorize the Commission to keep records confidential on the grounds of breach of contract by the submitting party. CRES's contract with PG&E does not provide sufficient justification for designating the records as confidential pursuant to CCR section 2505.

CRES cites the California Public Records Act (Gov. Code, § 6254(k)) which exempts from disclosure records which are exempted pursuant to federal or state law (including Evidence Code sections related to privilege), and Evidence Code section 1040, which provides a privilege for official information. However, it is clear that the data is not official information, and thus does not fall within the exemption provided by Evidence Code section 1040.

It appears that CRES may have *intended* to claim the information is trade secret, and the California Public Records Act does allow 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.)

However, CRES's application does not actually claim that the information for which confidentiality is sought are trade secrets. CCR section 2505(a)(1)(D) requires:

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If the applicant believes that the record should not be disclosed because it contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, the application shall also state the specific nature of that advantage and how it would be lost, including the value of the information to the applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

CRES's application for confidentiality does not meet the above requirements for holding the information confidential on the basis of trade secrets, in part because the application does not claim that the information is trade secret or a formula, pattern device or compilation of information used in CRES's business. Furthermore, the application does not state the specific nature of the trade secret or competitive advantage, does not explain how that competitive advantage would be lost, nor what the value of the information is, nor the ease or difficulty with which the information could be acquired or duplicated by others.

Consequently, your application for confidentiality is denied. Should you feel that you have additional information that could support your claim of confidentiality, please submit a new application, following the procedures set forth in CCR, section 2505. Alternatively, the procedures and criteria for appealing any part of this decision are also set forth in CCR, section 2505. Be advised that an appeal of this decision must be filed within fourteen days from my decision. 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', with a large, stylized flourish at the end.

MELISSA JONES
Executive Director

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