

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

March 17, 2009

DOCKET**02-REN-1038**DATE MAR 17 2009RECD. MAR 17 2009Mike Norris
Burney Mountain Power
P.O. Drawer 2375
Burney, CA 96013**RE: Existing Renewable Facilities Application
Application for Confidentiality
Burney Mountain Power
Docket No. 02-REN-1038**

Dear Mr. Norris:

On February 17, 2009, Burney Mountain Power (Burney) filed an Application for Confidentiality in the Docket No. 02-REN-1038. The Application seeks confidentiality for information related to the 2009 Funding Eligibility Existing Renewable 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. The Application states:

All documents and supporting information provided should not be disclosed because it contains trade secrets or its disclosure would otherwise cause a loss of competitive advantage.

Burney requests that the information be kept confidential for the next 10 years, "because the amounts provided contain confidential market and operating information."

Burney bases its request on Section 6254.7(d) of the Public Records Act (Gov. Code, § 6254(k)). Burney states that the information provided by Burney is trade secret because:

. . the principal (sic) trade secrets of the facility include everything relating to our production data, operating plan, marginal operating costs and fuel costs. . . 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 the 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. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

To begin with, your request for confidentiality is exceedingly broad. You requested confidentiality for the entire Existing Renewable Facilities Program Application, but it is clear that a large amount of the information contained in the in application is not confidential. For example, Section 1 of Form CEC-1250E-1 asks for the name of the facility, which is obviously public information and therefore not confidential. Section 2 of the same form asks for the Address of the facility and the facility owner, which again is clearly public information. Form CEC 1250E-3 contains only the names and signatures of persons authorized to sign the Monthly Invoice Reports, which is not trade secret. Indeed, the majority of the application is public information.

As to some of the items in the Funding Eligibility Existing Renewable Facilities Program Application, however, Burney'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 Burney's response to those item numbers, are confidential:

- Line 21 – Total State Tax Credits Received by Facility
- Line 22 – Total Federal Tax Credits Received by Facility
- Line 23 – market Value of the Facility
- Line 24 – Explanation of how incentive payments will allow the facility to become cost-competitive by the end of the 2011 calendar year
- Line 27 – Estimate of the target price needed in order to ensure the continued operation of the facility through the application year
- Line 28 – Estimate of the production incentive cap needed

This information listed directly above is exempt from public disclosure since it constitutes a trade secret, and could harm Burney's proprietary business interests.

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Gov. Code § 6254 (k). This information will not be aggregated or masked, and is granted confidentiality until December 31, 2012.

With regards to the remaining information, the request is denied. As I stated above, 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.

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,

MELISSA JONES
Executive Director

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