

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

May 6, 2009

John Richardson  
Community Renewable Energy Services  
Dinuba Energy  
P.O. Box 1063  
Sun Valley, CA 91352**DOCKET****02-REN-1038**DATE May 06 2009RECD. May 06 2009

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

Dear Mr. Richardson:

On April 6, 2009, Community Renewable Energy Services (CRES) re-submitted an Application for Confidentiality in the Docket No. 02-REN-1038 on behalf of Dinuba Energy.<sup>1</sup> The Application seeks confidentiality for information related to the Funding Eligibility Existing Renewable Facilities Program Applications for 2008 and 2009. Specifically, the Application seeks confidentiality for responses to questions 23, 24, 25, 26, 27, and 28 of the funding eligibility application (Form CEC-1250E-1). Those questions relate to the following:

- 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 25 – Explanation of the public benefits provided by the operation of the facility
- Line 26 – Copy of recent billing statements from your utility
- 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

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.

<sup>1</sup> Two previous applications were submitted in February 2009 and denied for failure to make a reasonable claim of confidentiality.

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, that public disclosure may place CRES in breach of that contract, and that "Contract terms, including contract prices for energy, should be considered a trade secret because public disclosure of this information could give other businesses a competitive advantage over the facility when bidding for fuel and other services." CRES further states:

If a competitor had this information, the facility could lose any competitive advantage when negotiating the price of fuel used to run the facility. The facility is located near several other biomass plants and competes with these plants and other businesses when procuring biomass fuel produced in the region. Any loss of this competitive advantage could make the facility unable to procure enough economically viable fuel which would lead to curtailment or even shutting down the plant.

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 1060, which exempts trade secrets from public disclosure.

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.)

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

- 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 – Explanation of why the requested target price level is needed, and how the incentive payments will allow the facility to become cost competitive by December 31, 2011
- Line 28 – Explanation of why the requested production incentive cap level is needed given the facility's circumstances

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

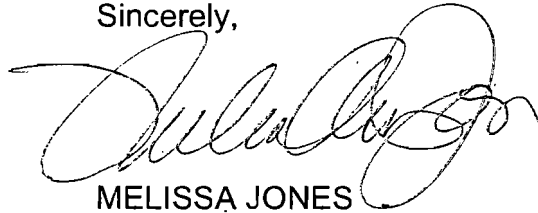
Persons may petition to inspect or copy the records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

**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).

Mr. John Richardson  
May 6, 2009  
Page 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", written in a cursive style.

MELISSA JONES  
Executive Director

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