

**CALIFORNIA ENERGY COMMISSION**1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

December 17, 2012

California Energy Commission

**DOCKETED****12-IEP-1C**

TN # 68890

DEC 17 2012

Mr. Bohdan Buchynsky  
Wildflower Energy, LP  
333 South Grand Ave, #1570  
Los Angeles, CA 90071-1519

RE: **Application for Confidentiality, As-Operating Cost Information**  
**Wildflower Energy LP**  
**Docket No. 12-IEP-1C**

Dear Mr. Buchynsky:

On November 9, 2012, Wildflower Energy, LP filed an application for confidentiality seeking confidentiality for information related to the Wildflower power plant's budget and cost information for construction, operations and maintenance. The information is being provided in response to Commission information request under the Integrated Energy Policy Report process. After discussions with staff to clarify the scope of the Application, the applicant requests confidentiality for all costs associated with facility operation which corresponds to the following sections on Attachment 1:

- #1) Total Annual Operating Costs
- #4) Duct Burner Natural Gas Usage
- #5) Natural Gas Average Annual Price (\$/MMBtu)
- #6) Water Supply Cost
- #7) Staffing (average annual cost-2011 dollars)
- #8) Ongoing Operating Costs
- #9) Estimate of Actual Annual Maintenance Costs

The application states that the budget information is confidential as a trade secret and as proprietary financial information. Specifically, the application claims:

As-Operating data provides cost information which could be used by competitors and others in the market to the detriment of the Applicant's business.

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 and proprietary information. (Gov. Code, §§ 6254(k), 6254.7, 6254.15 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.)

California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation 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 state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to the applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The applicant addresses each of these four requirements by stating the following:

*The specific nature of the advantage* -The confidential record represents a valuable compilation of information related to project budgets for operations, and maintenance. The ability to reduce costs is a competitive advantage.

*How the advantage would be lost* –Competitors and those contracting with the Applicant would be at an advantage if they knew the Applicant's costs.

*The value of the information to the applicant* -The confidential record is valuable to the project because of the: (1) time and resources expended to compile the information; (2) efforts to maintain the confidentiality of the confidential record; and (3) use of the information to facilitate ongoing business activities.

*The ease or difficulty with which the information could be legitimately acquired or duplicated by others* -The confidential record is not readily available on the marketplace and can only be obtained with a significant investment of time and money. Thus, others could not easily acquire or duplicate this information.

In addition to trade secrets, Government Code section 6254.15 exempts from disclosure the following types of information:

Corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California.

Applicant has made a reasonable claim that the law allows the Energy Commission to keep the project's budget for operations and maintenance confidential on the grounds that it is proprietary and trade secret information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage.

Applicant requests that the information be designated confidential for 10 years.

Based on the above discussion, the Applicant's confidentiality application is granted. The budget data subject to this confidentiality designation will be kept confidential for 10 years.

Be advised that persons may petition to inspect or copy 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. If you have any questions concerning this matter, please contact Jared Babula, Senior Staff Counsel, at (916) 651-1462.

Sincerely,



Robert P. Oglesby  
Executive Director

cc: Docket Unit  
Ivin Rhyne, Electricity Supply Analysis Division