

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

January 28, 2013

California Energy Commission

DOCKETED
12-IEP-1C

TN # 69306

JAN. 28 2013

Mr. Christopher R. Bluse
Orange Grove Energy LLP
1900 E. Golf Road, #1030
Schaumburg, IL 60173

RE: **Application for Confidentiality, As-Operating and As-Built cost
Information for the Orange Grove Power Plant
Docket No. 12-IEP-1C**

Dear Mr. Bluse:

The Energy Commission is in receipt of an application for confidentiality submitted by, Orange Grove Energy, L.P ("Applicant"). The application seeks confidentiality for information related to plant's budget and cost information for construction, operations and maintenance. The information is being provided in response to a Commission information request under the Integrated Energy Policy Report process. The Applicant requests confidentiality for costs associated with construction and operation which corresponds to the following sections on Attachment 1:

As-Operating

- #1) Total Annual Operating Costs
- #7) Staffing (average annual cost-2011 dollars)
- #8) Ongoing Operating Costs

As-Built

- #4) Total Capital Cost of Facility
- #5) Gas Turbine/Generator Cost
- #11) Total Construction Cost
- #13) Cost of Linear Connection Construction
- #14) Cost of Licensing/Permitting Project

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

The information is sensitive in nature and any disclosure would place the Applicant in a competitive disadvantage as well as potentially exposing the Applicant to breach of contract violations as it relates to confidentiality provisions for certain contracts that have been entered into.

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.

In this case cost information has value because counter parties, vendors and competitors can use such information to their business advantage by manipulating any future negotiations with the Applicant. The cost information is not available to others and has been protected by the Applicant.

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

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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.

In this case the facility is located in California and the cost information is being used to allow the Commission to better understand the costs of building, operating and potentially expanding power generating facilities in the state.

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

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 the time period of five years from the date of the application, January 4, 2013.

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,

A handwritten signature in blue ink, appearing to read 'R. Oglesby', with a stylized flourish at the end.

Robert P. Oglesby
Executive Director

cc: Docket Unit
Ivin Rhyne