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August 12, 2008

Douglas J. Parsons  
Chief Executive Officer & Director  
SunEnergy Power Corporation  
1133 NW Wall Street, Suite 305  
Bend, OR 97701-1968

Heather A. Pauley  
Assistant City Attorney  
City Attorney's Office  
1333 NW Eastman Parkway  
Gresham, OR 97030-3813

Re: Petition of Douglas J. Parsons received July 21, 2008 to disclose certain records of the City of Gresham

Dear Mr. Parsons and Ms. Pauley:

#### BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Douglas Parsons requests the District Attorney to order the City of Gresham and its employees to produce the following records:

- 1. Appendix 6b ("Cost Schedule and NPV Analysis") of the bid from the team of Tioga Energy and REC Solar; and**
- 2. The entire bid document from General Electric Energy, or the redacted version if it is available.**

Petitioner's company was one of four bidders on the City of Gresham's RFP for Solar Energy Facilities. He was informed that his bid was the second lowest of four bids received. Petitioner requested to inspect the other bids, some of which came with a claim of confidentiality. Petitioner was given the bid of Honeywell, a redacted version of the Tioga/REC bid, and nothing of the General Electric Energy proposal.

Assistant City Attorney Heather Pauley responded to the request in a June 12, 2008 letter. The City of Gresham claimed exemption under ORS 192.501(2), Trade Secrets. Ms. Pauley noted that the City requested the bidders provide redacted versions of their proposal. Petitioner

and Tioga/REC complied, Honeywell made no request for confidentiality, and General Electric Energy requested confidentiality, but did not provide a redacted version to the City.

The City declined to provide the unredacted version of the Tioga/REC bid to petitioner because it was "unable to determine if the redacted proposal provided only redacted trade secrets." The City declined to provide the General Electric Energy proposal to petitioner because its bid did not include a "redacted version" thus making it impossible to evaluate the presence of trade secrets. The City provided this office with a confidential copy of Appendix B of the Tioga/REC proposal as well as the General Electric Energy proposal for our review.

The Gresham City Attorney's Office made several attempts to get clarification from both Tioga/REC and General Electric Energy on their claims of trade secrets. Petitioner even agreed to an extension of this order to August 13, 2008 in order to accommodate the City's efforts. On July 30, 2008 this office was in communication with representatives of Tioga/REC. They indicated there was no objection to the release of Appendix 6b of their proposal. Petitioner has received the requested Tioga/REC materials from the City. This part of the petition is now moot.

This office received an August 7, 2008 letter from Mark A. Yokubaitus, Sales Manager for General Electric Energy. He asserted that the "GE Energy proposal in response to the City of Gresham RFP No. 08-09 contains trade secrets and innovative proprietary financial structure that were not intended by GE Energy to be made public knowledge and is therefore exempt from disclosure." Conspicuously absent from the letter was any indication what the "trade secrets" were in the proposal.

## DISCUSSION

### **I. Trade Secrets.**

ORS 192.501(2) conditionally exempts:

Trade Secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it[.]

The District Attorney's Office has taken a consistent position on this exemption that is both narrow and focused. We rejected the exemption with respect to documents detailing estimated annual revenues/expenses included in the Portland Family Entertainment proposal for renovation of Civic Stadium (August 12, 1999 order on petition of The Oregonian). We accepted


the exemption with respect to the non-patented processes, procedures, testing data, and mechanisms of a device provided to Metro in an application for a grant (February 24, 2003 order on petition of Stephen Crew).

Ms. Pauley has asked General Electric Energy on numerous occasions (both before and after the filing of this petition) for an explanation of its claim of trade secrets. Ms. Pauley referred representatives of General Electric Energy to this office as well. Neither Ms. Pauley nor this office has received the necessary and appropriate response. The 39-page General Electric Energy proposal was not redacted in any way when submitted to the City. This bidder has made no attempt to identify what specific materials it considers to be "trade secrets." Consequently, there is no basis for the claim of exemption under ORS 192.501(2). The General Electric Energy proposal must be disclosed in its entirety.

ORDER

Accordingly, it is ordered that the City of Gresham promptly disclose the entire bid document from General Electric Energy as sought in the petition. Disclosure of the documents ordered is subject to payment of the City of Gresham's fee, if any, not exceeding the actual cost in making the information available, consistent with ORS 192.440 and this order.

Very truly yours,

  
MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County, Oregon

NOTICE TO PUBLIC AGENCY

Pursuant to ORS 192.450(2), 192.460 and 192.490(3) your agency may become liable to pay petitioner's attorney fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within 7 days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within 7 additional days thereafter.