

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**IN THE MATTER OF THE
APPLICATION FOR
AUTHORITY TO DEVELOP,
OWN AND OPERATE
DEDICATED POINT-TO-
POINT LIMITED FACILITIES
TO CONNECT THE PALAYAN
BINARY POWER PLANT TO
THE LUZON GRID, WITH
PRAYER FOR PROVISIONAL
AUTHORITY**

ERC CASE NO. 2019-001 MC

**BAC-MAN GEOTHERMAL,
INC. (BGI),**
Applicant.

Promulgated:
July 26, 2021

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ORDER

Before the Commission for resolution is the *Motion for Reconsideration* to the *Order* dated 18 July 2019 (Motion), filed by Bac-Man Geothermal, Inc. (BGI) on 28 August 2019.

On 04 April 2019, BGI filed its *Submission (with Motion for Confidential Treatment of Information)*.

On 07 August 2019, the Commission issued an *Order* dated 18 July 2019, partially granting BGI's Motion for Confidential Treatment of Information.

On 28 August 2019, BGI filed the subject *Motion* seeking reconsideration of the said *Order* dated 18 July 2019. The pertinent allegations of BGI in its *Motion* is hereunder quoted, as follows:

“xxx

6. The Memorandum from the Executive Secretary dated 24 November 2016 which provides the said exceptions to the right to access of information embodied in Executive Order No. 02, series of 2016 clearly provides that “*information, documents or records*

*known by reason of official capacity and are deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards, or officers, in relation to the performance of their functions, or to inquiries or investigation conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers, such as but not limited to xxx **trade secrets, intellectual property, business, commercial, financial and other proprietary information**, xxx and any secret, valuable or proprietary information of a confidential character known to a public officer, or secrets of private individuals,”* are included as exceptions to the right of access to information.

7. It is therefore clear in the Memorandum that the access to information can be denied in the event such information, document or records were known by reason of official capacity, including those submitted or disclosed by entities, like Applicants in this case, to government agencies, tribunals, boards, or officers, such as this Honorable Commission, in the exercise of their administrative, regulatory or quasi-judicial powers.
8. In addition, the said Memorandum provides that trade secrets, business, commercial, financial and other proprietary information such as those contained in the documents denied confidential treatment are not covered by the right to access information.

xxx

11. xxx The Order also cited Air Philippines Corporation case’s definition of a trade secret which includes compilation of information that is used in one’s business and gives the employer an opportunity to obtain an advantage over competitors who do not possess such information.

xxx

13. The documents denied confidential treatment contain business calculations, assumptions and projections, as well as indicate financial, costing and marketing strategies of BGI. If the said information containing the business, financial and marketing strategies, as well as calculations of a corporation is obtained by any of its competitor, a competitor can use such information to its advantage in order to have a business or marketing upper hand and eliminate competition in the industry, to the detriment of the corporation.

xxx”

The Commission maintains that the information does not warrant treatment of confidentiality.

A blanket claim that an information is a trade secret cannot be upheld. In *Cocoland Development Corporation v. NLRC*, the Supreme Court stated, as to the determination what is trade secret, that:

“Any determination by management as to the confidential nature of technologies, processes, formulae or other so-called trade secrets must have a substantial factual basis which can pass judicial scrutiny.”¹

While Rule 4 of the Commission’s Revised Rules of Practice and Procedure (Revised RPP)² recognizes confidentiality of information, a claim of the confidential nature of trade secrets by any party must pass judicial scrutiny.³

Relative to the foregoing, Sections 1 and 2, Rule 4 of the Commission’s Revised RPP provide that:

Section 1. Motion for Confidential Treatment of Information. – A party to a proceeding before the Commission may move for information to be treated as confidential.

xxx

The movant has the burden to establish that the information is entitled to such confidentiality.

Section 2. Resolution on the Motion. – For the purpose of determining whether or not to accord confidential treatment to information, the Commission may review the information claimed to be confidential.

xxx”

Pursuant to Section 2 quoted above, the Commission may review the information to determine whether or not to approve said motion. Accordingly, the Commission, in resolving motions of this nature, has set standards in order to make a sound, fair, and consistent ruling.

¹ G.R. No. 98458, 17 July 1996.

² Energy Regulatory Commission, A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission, Resolution No. 01, Series of 2021 [Revised Rules of Practice and Procedure] (17 December 2020).
The Resolution became effective on 04 April 2021.

³ *Supra* note 1.

Further, in recognition of the people's Constitutional right to information vis-à-vis the Supreme Court's affirmation of the right of an owner to guard its trade secrets, the Commission has set standards in granting confidential treatment to information, considering the applicable laws, rules, jurisprudence, previous decisions and policies of the Commission.

Upon revisiting the documents sought to be reconsidered and treated as confidential, the Commission maintains its previous ruling that the data and information provided therein cannot be accorded treatment of confidentiality.

It must be noted that the documents were denied treatment of confidentiality because the Commission has determined that these documents do not have valuable proprietary interest.

While the Commission is mindful of the rights of the parties to protect its trade secrets, not all documents claimed as confidential pass the standards used for scrutiny by the Commission. Moreover, the Commission must also balance the interest of the public so that the latter is duly informed of the reasons and bases of a decision that the former will render in an application.

The Supreme Court, in the case of *Ang Tibay v. CIR*, outlined the requirements of due process in administrative proceedings.⁴ One of such requirements is that the decision must have something to support itself.⁵ Thus, the Commission, in rendering decisions on applications before it, should be transparent in the evaluation conducted and must clearly show how it arrived at such decision.

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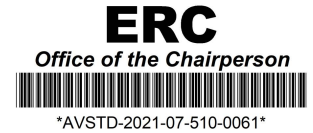
⁴ G.R. No. L-46496, 27 February 1940.

⁵ *Id.*

WHEREFORE, the foregoing premises considered, the Commission hereby **DENIES** the *Motion for Reconsideration* to the *Order* dated 18 July 2019, filed by Bac-Man Geothermal, Inc. (BGI).

SO ORDERED.

Pasig City, 16 June 2021.



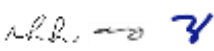

AGNES VST DEVANADERA
Chairperson and CEO


ALEXIS M. LUMBATAN
Commissioner


CATHERINE P. MACEDA
Commissioner


FLORESJNDA G. BALDO-DIGAL
Commissioner


MARKO ROMULO L. FUENTES
Commissioner


LS: IHH/ARG/MCCG

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