

DOCKETED

Docket Number:	07-AFC-05C
Project Title:	Ivanpah Solar Electric Generating System (Compliance)
TN #:	212616
Document Title:	Response to Application for Confidential Designation - NRG Renewables, LLC
Description:	N/A
Filer:	Sabrina Savala
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	8/4/2016 10:02:18 AM
Docketed Date:	8/4/2016

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512



August 4, 2016

Randall Hickok
Manager, Solar Partners VIII, LLC
c/o NRG Renewables LLC
4900 N. Scottsdale Rd., Suite 5000
Scottsdale, AZ 85251

RE: **Application for Confidential Designation for the Investigation
Root Cause Report
Ivanpah Solar Electric Generating System Unit 3
Docket No. 07-AFC-5C**

Dear Mr. Hickok:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of Solar Partners VIII, LLC. The application seeks confidential designation for the *Investigation Root Cause Report (June 16, 2016)* (Confidential Record).

The application states that confidentiality is sought for a report analyzing the cause of a fire at the Ivanpah Solar Generating System Unit 3 (project) on May 19, 2016 and the corrective actions to be taken to prevent future, similar events from occurring. The application states that the report contains competitively sensitive information regarding the operation of the project. Applicant provided staff with both the full report and a redacted version of the report, which does not contain information deemed trade secret or proprietary. The Confidential Record has not been disclosed publicly.

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. (Gov. Code, § 6254(k); Evid. Code, § 1060.)

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 an 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, an application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to an applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application, supplemented by additional correspondence with Applicant concerning the proprietary nature of the information contained in the report, addresses these four elements: 1) the Confidential Record contains details surrounding proprietary software capabilities and system processes and procedures that are specifically developed by the project owners and their partners; 2) public disclosure of such details could provide competitors with access to components or those capabilities and processes that otherwise may not be available; 3) early market entry and low capital costs are important to Applicant, and public disclosure could jeopardize this competitive advantage; and 4) the Confidential Record has been marked as confidential and proprietary by partners and service/system providers of the project, and its release is subject to contractual restrictions with the project and its partners.

Government Code section 6254.15 exempts from disclosure under the California Public Records Act 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 Confidential Record is being supplied to the California Energy Commission in response to a request by California Energy Commission Staff in preparation of a Staff report concerning the fire.

The application is clear that confidentiality is being sought for trade secret information related to the permitting of a siting project within the state. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the Confidential Record from public disclosure.

Applicant requests that the information be kept confidential for twenty-three years, which is the remaining term of the Ivanpah Solar Generating System Unit 3 power purchase agreement.

Randall Hickok
August 4 2016
Page 3

The trade secret information has value as long as the project continues to operate; therefore, it is appropriate to grant confidentiality for twenty-three years or until the project ceases to operate, if operation is ceased before the end of the term of the power purchase agreement.

For the reasons stated above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential for twenty-three years or until the project ceases to operate, if operation is ceased before the end of the term of the power purchase agreement. The redacted version of the Root Cause Report, provided to Energy Commission Staff by Applicant, will be available to the public.

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 Michelle Chester, Staff Counsel, at (916) 651-2935.

Sincerely,



Robert P. Oglesby
Executive Director

cc: Docket Unit, California Energy Commission
Ryan Bates, NRG Energy, Inc., Assistant General Counsel
George Piantka, NRG Energy, Inc., Sr. Director, Regulatory Environmental Services
Christine Root, California Energy Commission, Siting, Transmission & Environmental Protection Division, Compliance Office