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

November 19, 2007

DOCKET
02-REN-1038
DATE NOV 19 2007
RECD. NOV 20 2007

Mr. Bryan J. Fennell
Luz Solar Partners, Ltd. VIII
Attn: Kate Stengle FEB/JB
700 Universe Blvd.
Juno Beach, FL 33418

RE: **Application for Confidentiality,**
Existing Renewable Facilities Program,
Docket No. 02-REN-1038

Dear Mr. Fennell:

On October 29, 2007, Luz Solar Partners, Ltd. VIII - IX (Luz VIII) filed an amended application for confidentiality in the above-captioned Docket. The application seeks confidentiality for Luz VIII's "Letter addressed to Jason Orta of the California Energy Commission Renewables Committee. Letter is dated October 10, 2007 and is four pages in length" (hereinafter "Letter"). Luz VIII is requesting that this information be kept confidential "for a period of two years. We believe this is an adequate period of time to protect the information we consider trade secrets." Luz VIII states, in part:

> The referenced section of the Public Records Act permits confidential designation for information determined to consist of trade secrets. Our facility is disclosing various trade secrets in the Letter.

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, § 1040.) 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.)

Luz VIII's confidentiality application makes a reasonable claim to grant confidentiality to most of the information contained the Letter. However, the first two sentences that begin the Summary section on page four of the Letter are not confidential. This data can either be derived from existing public information or is information that the Energy Commission must disclose to the Legislature. The Energy Commission has concluded that disclosing this information would not harm Luz VIII.

The rest of the Letter contains information that is exempt from public disclosure since it constitutes a trade secret, and could harm Luz VIII's overall proprietary business interests. (Gov. Code, § 6254 (k).) This information will not be aggregated or masked. Accordingly, this data is granted confidentiality until December 31, 2009.

Persons may petition to inspect or copy the 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.

Any appeal of my decision to grant confidentiality must be filed within fourteen days from the date of this decision. The procedures and criteria for appealing any part of this decision are set forth in the California Code of Regulations, title 20, section 2505. If you have any questions concerning this matter, please contact Fernando De Leon, Senior Staff Counsel, at (916) 654-4873.

Sincerely,

B. B. BLEVINS
Executive Director

cc: Docket Unit
Energy Commission Project Manager