

ELLISON, SCHNEIDER & HARRIS L.L.P.

CHRISTOPHER T. ELLISON
ANNE J. SCHNEIDER
JEFFERY D. HARRIS
DOUGLAS K. KERNER
ROBERT E. DONLAN
ANDREW B. BROWN
GREGGORY L. WHEATLAND
CHRISTOPHER M. SANDERS

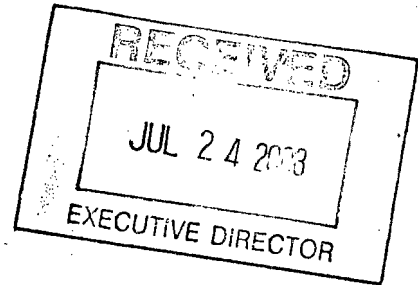
ATTORNEYS AT LAW
2015 H STREET
SACRAMENTO, CALIFORNIA 95811-3109
TELEPHONE (916) 447-2166 FAX (916) 447-3512

ELIZABETH P. EWENS, OF COUNSEL
TERESA W. CHAN
JEDEDIAH J. GIBSON
JEREMY D. GOLDBERG
LYNN M. HAUG
PETER J. KIEL

July 24, 2008

Melissa Jones
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

COMPLETED



RE: The Ivanpah Solar Electric Generating System – 07-AFC-05
Application for Confidential Designation: Biological Resources

Dear Ms. Jones:

Pursuant to Title 20 California Code of Regulations (CCR) Sections 2501 *et seq.*, Solar Partners I, LLC, Solar Partners II, LLC, Solar Partners VIII, LLC, and Solar Partners IV, LLC (the "Applicant") hereby submit this "Application for Confidential Designation" for the Ivanpah Solar Electric Generating System ("ISEGS") for Biological Resources.

Applicant timely objected to the information requested by Staff because the information sought by Staff represents a trade secret. Specifically, the information requested by Staff for its Alternatives analysis relates to other potential developments, has independent economic value, and is not generally known to the public or to other persons who can obtain economic value from its disclosure or use. Further, this information has been the subject of efforts that are reasonable under the circumstances to maintain its secrecy, including via the Applicant's timely objections. Nevertheless, in the interest of comity, the Applicant has agreed to provide this information with the understanding that it will be treated as confidential information that is a trade secret and otherwise exempt from production.

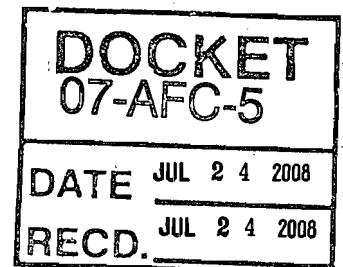
I am submitting the Application and confidential material directly to you without docketing at the Docket Unit. Enclosed are twelve copies plus an original of this request and five copies of the confidential information it concerns. Please feel free to contact me at (916) 447-2166 should you have any questions or require additional information. Thank you for your consideration of our request.

Sincerely,

A handwritten signature in black ink that reads "Jeffery D. Harris".

Jeffery D. Harris
Attorneys for the Applicant

enc.
cc: Service List without confidential attachments



APPLICATION FOR CONFIDENTIAL DESIGNATION
Ivanpah Solar Electric Generating System 07-AFC-05
Solar Partners I, LLC, Solar Partners II, LLC, Solar Partners VIII, LLC, and Solar
Partners IV, LLC (the "Applicant")

Biological Resources

1. *Specifically indicate those parts of the record which should be kept confidential.*

The following documents should be kept confidential in their entirety:

Attachment DR123a-1 Siberia-CNDDDB
Attachment DR123a-2 Broadwell Lake CNDDDB
Figure DR121-1a Siberia Site – Unit 1
Figure DR121-1b Siberia Site – Unit 2
Figure DR121-2a Broadwell Lake Site 1 of 4
Figure DR121-2b Broadwell Lake Site 2 of 4
Figure DR121-2c Broadwell Lake Site 3 of 4
Figure DR121-2d Broadwell Lake Site 4 of 4
Figure DR123a-1 Siberia Site CNDDDB
Figure DR123a-2 Broadwell Lake CNDDDB

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

Consistent with applicable law, this information should be held confidential indefinitely in order to protect the biological resources identified therein and as confidential trade secrets as described below.

3. *Cite and discuss (i) the provisions of the Public Records Act or other law which allow the commission to keep the record confidential and (ii) the public interest in nondisclosure of the record.*

The Public Records Act exempts "trade secrets" from public disclosure, including "any formula, plan, ... production data, or compilation of information ..., which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service ... and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it." (Govt. Code § 6254.7(d).)

The California Civil Code Section 3426.1(d) defines a "trade secret" as follows:

(d) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The Commission's regulations provide for information to be designated as confidential if it "contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage." (20 CCR § 2505(a)(1)(D).)

Applicant timely objected to the Staff's Data Request for this information and has not waived that objection. Notwithstanding the objection, in the interest of comity, the Applicant has agreed to provide the Staff with confidential Biological Resources information, as detailed in this Application.

The information requested by Staff for its Alternatives analysis relates to other potential developments at other sites and thus has independent economic value. This fact of economic value is demonstrated, in part, by the Applicant's expending resources to have its staff and consultants gather and compile this economically valuable information. Next, because the information must be gathered about these Alternative project sites and compiled into the useful format presented, the information is not generally known to the public or to other persons who can obtain economic value from its disclosure or use. Specifically, competitors could gain economic value from the information presented on these sites that may be developed by the Applicant or has been developed by Applicant's parent company, BrightSource Energy Inc.

For example, knowing the location of potentially sensitive species could dictate where a competitor might try to site a facility. Further, this information has been the subject of efforts that are reasonable under the circumstances to maintain its secrecy, including via the Applicant's timely objections.

The information represents valuable trade secret information, in part, because the Bureau of Land Management ("BLM") policies allow for competing project developers to file applications for the same lands. There are several locations in California where competitors have overlapping applications already. The documents in Section 1, if public, would inform competitors of the specific information regarding certain lands, thereby providing economic value to other persons who can obtain economic value from its disclosure.

In addition, the existing BLM Solar Policy, in a section entitled "Competitive Interest," allows for competitive bidding by different applicants on the same parcel:

Right-of-way applications for solar energy development will generally be accepted and processed on a first-come, first-serve basis. The right-of-way regulations (43 CFR 2804.23(c)) provide

authority for offering public lands under competitive bidding procedures for solar energy right-of-way authorizations. The BLM will initiate a competitive process if a land use planning decision has specifically identified an area for competitive leasing. The BLM may also consider other public interest and technical factors in determining whether to offer lands for competitive leasing. Competitive bidding will follow the procedures required by 43 CFR 2804.23(c).¹

Similarly, the BLM's recent Notice of Intent also states that competing Applications will be considered for a single parcel:

This [reasonably foreseeable development scenario] will identify which BLM land use plans might be amended. Examples of possible amendments to land use plans include the (1) adoption of stipulations (e.g., wildlife management guidelines) applicable to solar energy development projects, and (2) identification of lands with high solar energy development potential, including the designation of lands suited to competitive leasing, if applicable.²

Because the BLM allows for two developers to compete for the same parcel of land and because the information requested by Staff would be of economic benefit to a competitor seeking to build a project on these same lands, the Commission must treat the information as protected materials not subject to production under the California Public Records Act or any similar statutes or regulations.

4. *State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

The Applicant considered whether it would be possible to aggregate or mask the information. However, the information is specific to certain lands described in the Staff's Data Requests, and no feasible method of aggregating or masking the information could be identified that would not either disclose the information or render the information provided useless.

¹ Solar Energy Development Policy, Instruction Memorandum No. 2007-097, dated April 4, 2007. Available at: http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/public_affairs.Par.20041.File.dat/IM2007-097.pdf.

² "Notice of Intent To Prepare a Programmatic Environmental Impact Statement To Evaluate Solar Energy Development, Develop and Implement Agency-Specific Programs, Conduct Public Scoping Meetings, Amend Relevant Agency Land Use Plans, and Provide Notice of Proposed Planning Criteria," Federal Register, Vol. 73, No. 104, May 29, 2008, at p. 3.
Available at: http://solareis.anl.gov/documents/docs/Solar_Energy_Development_PEIS_NOI.pdf

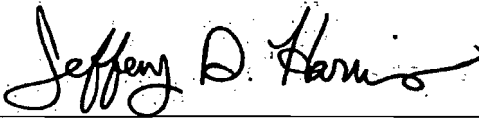
5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

Applicant has not disclosed any of the subject information to anyone other than its or BrightSource Energy's employees, attorneys and consultants working on solar project development. Moreover, this information has not been disclosed to persons employed by, or working for, Applicant or BrightSource Energy except on a confidential, "need-to-know" basis.

I certify under penalty of perjury that the information contained in this Application for Confidential Designation is true, correct, and complete to the best of my knowledge and belief. I am authorized to make the Application and Certification on behalf of Applicant.

Dated: July 24, 2008

ELLISON, SCHNEIDER & HARRIS LLP

By: 

Jeffery D. Harris
Jedediah J. Gibson
Ellison, Schneider & Harris L.L.P.
Attorneys for Applicant