

**ELLISON, SCHNEIDER & HARRIS L.L.P.**

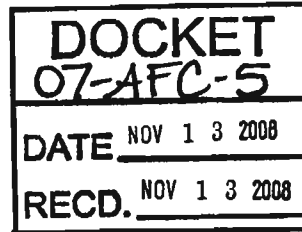
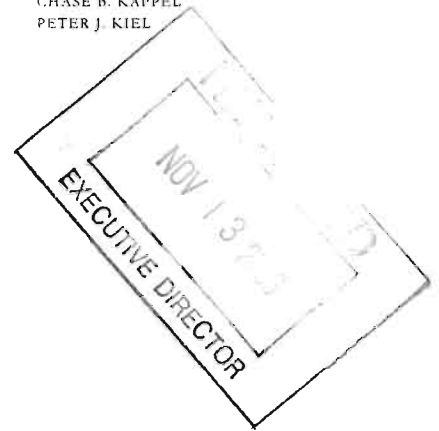
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**COMPLETED**

November 13, 2008



Melissa Jones, Executive Director  
California Energy Commission  
1516 Ninth Street, MS-39  
Sacramento, CA 95814-5504

Re: Application for Confidentiality, System Impact Study Ivanpah Solar Electric  
Generating System Docket No. 07-AFC-5

Dear Ms. Jones:

Solar Partners I, LLC, Solar Partners II, LLC, Solar Partners VIII, LLC and Solar Partners IV, LLC ("Applicant") received your letter dated October 30, 2008, denying the Application for Confidential Designation Applicant filed on September 18, 2008 ("Application"). Applicant requested confidential treatment of the Interconnection System Impact Study ("SIS") for the Ivanpah SEGS project, also known as the DPT 2 Power Project, dated August 28, 2008. Pursuant to Title 20 of the California Code of Regulations ("CCR"), Section 2505(a)(3)(B), Applicant appeals from the Executive Director's determination that the California Energy Commission ("CEC") will not grant confidential treatment to the SIS.

Southern California Edison ("SCE") is the transmission owner. SCE has communicated to the Applicant its concerns regarding the denial of the request for confidential treatment of the SIS. Since the Applicant filed the request for confidential treatment and thus has standing to bring this appeal, the Applicant is pleased to set forth below SCE's arguments in favor of confidential treatment of the SIS for the Ivanpah SEGS project.

1. The Applicable Legal Standards

"An application *shall* be granted if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential."<sup>1</sup>

<sup>1</sup> 20 CCR § 2505(a)(3)(A) (italics added).

Public Resources Code § 25322(a)(1) provides in relevant part:

(1) Any person required to present information to the commission pursuant to this section may request that specific information be held in confidence. The commission *shall* grant the request in any of the following circumstances:

(A) The information is exempt from disclosure under the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(B) The information satisfies the confidentiality requirements of Article 2 (commencing with Section 2501) of Chapter 7 of Division 2 of Title 20 of the California Code of Regulations, as those regulations existed on January 1, 2002.

(C) On the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.<sup>2</sup>

2. The SIS Is Exempt From Disclosure Under The California Public Records Act

The California Public Records Act provides that the following is exempt from its disclosure requirement:

Geological and geophysical data, plant production data, and similar information relating to utility systems development.<sup>3</sup>

The results of the production simulation contained in the SIS yield essentially the same information that would be provided by plant production data. This data, protected from disclosure by the Public Records Act, should thus be treated as confidential by the CEC.

Further, the California Public Records Act exempts from disclosure records protected by federal or state law, including provisions of the Evidence Code relating to privilege. Evidence Code § 1060 creates a privilege for trade secrets. A trade secret is broadly defined as "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives 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

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<sup>2</sup> Public Resources Code § 25322(a)(1) (italics added).

<sup>3</sup> California Government Code § 6254.

disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

The information contained in the SIS study may be abused by market participants to extract higher prices from SCE and its customers. For example, the SIS includes sensitive and confidential location-specific load forecast data. In the CAISO-controlled transmission planning process, the basis for SIS load assumptions is the official CEC system demand forecast. This CEC demand forecast, a publically available document, deliberately disaggregates demand projections into large climate zones and does not provide location-specific demand forecasts. However, the SIS contains detailed information related to how the zonal CEC forecast is distributed throughout the PTO service territory. There is a definite correlation that can be made between location-specific forecasted demand levels and location-specific electric system reliability constraints. This detailed load forecast information (and, in fact, the results of studies based on that information) can clearly be leveraged by market participants with access to information regarding localized reliability constraints. Accordingly, the CEC should grant confidentiality to the SIS because the information contained therein is not generally known to the public or others, the information has significant economic value, and it is the subject of reasonable efforts to maintain its secrecy.

3. The Public Interest Served By Not Disclosing The SIS Clearly Outweighs The Public Interest Served By Its Disclosure

The Federal Energy Commission (“FERC”) defines critical infrastructure as “existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.”<sup>4</sup> Further, FERC has noted that “there is far less need for the public as a whole to have unfettered access to location information submitted to the Commission regarding the electric grid.”<sup>5</sup>

Maps of the relevant portions of SCE’s transmission grid have been submitted to FERC in the past. However, the data in the SIS is even more sensitive – whereas a map of the electrical grid provides the location of transmission lines, the SIS provides system power flows and thus could be used to identify which of those transmission lines are critical transmission lines. Accordingly, while the SIS has not been submitted to a “covered Federal agency,” any benefits from its disclosure would be greatly outweighed by the risks that would result from its release.

4. The SIS Is Considered Confidential Under The LGIP

Section 1.2.2 of the LGIP defines “Confidential Information” as:

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<sup>4</sup> 18 CFR 388.113(c)(2).

<sup>5</sup> Critical Energy Infrastructure Information, 102 FERC ¶ 61,190 at P 34.

any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, subject to Section 13.1 of the LGIP.

Section 13.1 of the LGIP, titled Confidentiality," states:

Confidential Information shall include, without limitation, all information relating to a party's technology, research and development, business affairs, and pricing, and *any information supplied by any of the Parties to the other Parties prior to the execution of an LGIA.* (italics added)

The information in the SIS, which clearly relate to SCE's business operation of the grid, were provided to the Applicant prior to the application of an LGIA and were identified as confidential. Thus, the SIS is clearly covered under the LGIP's provision for confidentiality.

5. In The Alternative, Specific Portions Of The SIS Should Be Redacted

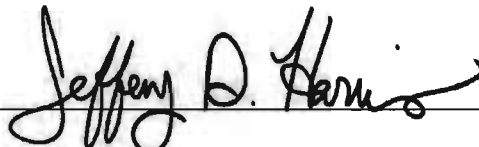
If the CEC declines to consider the SIS confidential in its entirety, Applicant requests that the following specific portions of the SIS, which contain the most sensitive information, be redacted prior to its release: Table 1-2, Table 1-3, Figure 2-1, Figure 2-2, Figure 2-3, and Figure 2-4.

Conclusion

For the foregoing reasons, the CEC should grant this appeal and grant the Applicant's request for confidential treatment of the SIS due to its highly confidential nature. In the alternative, if the CEC declines to designate the SIS to be confidential in its entirety, Applicant requests that the above specified sections be redacted from the SIS prior to its release.

Dated: November 13, 2008

ELLISON, SCHNEIDER & HARRIS L.L.P.

By: 

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

STATE OF CALIFORNIA

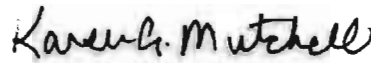
Energy Resources Conservation  
and Development Commission

Application for Certification for the IVANPAH )  
SOLAR ELECTRIC GENERATING SYSTEM ) Docket No. 07-AFC-5  
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**PROOF OF SERVICE**

I, Karen A. Mitchell, declare that on November 13, 2008, I served the attached *Letter to Melissa Jones re Confidentiality Appeal* via electronic mail to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.



\_\_\_\_\_  
Karen A. Mitchell

**SERVICE LIST**  
**07-AFC-5**

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