

CONFIDENTIAL

COMPLETED

April 16, 2012

Robert Oglesby
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

DOCKET 11-AFC-4	
DATE	APR 16 2012
RECD.	APR 17 2012



**sierra
research**

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RE: Rio Mesa Solar Electric Generating Facility -11-AFC-04 Sierra Research Inc.,
Application for Confidential Designation

Dear Mr. Oglesby:

Pursuant to Title 20, California Code of Regulations sections 2501 *et seq.*, Sierra Research, Inc., consultant to Rio Mesa Solar I, LLC, Rio Mesa Solar II, LLC, and Rio Mesa Solar III, LLC, the applicant in proceeding number 11-AFC-4, hereby submits this "Application for Confidential Designation" for the Microsoft Excel spreadsheet submitted in response to CEC Staff's Data Request Number 16 in the aforementioned proceeding. The spreadsheet contains proprietary equations, formulas, and calculations used to produce air quality data and analysis for the Rio Mesa Solar Electric Generating Facility.

We are enclosing the Application for Confidential Designation and five copies of the confidential information. Please feel free to contact me at 916-444-6666 should you have any questions or require additional information. Thank you for your consideration of our request.

Sincerely,

Gary Rubenstein
Senior Partner

Enclosure

APPLICATION FOR CONFIDENTIAL DESIGNATION
Rio Mesa Solar Electric Generating Facility 11-AFC-4
Sierra Research, Inc.

Air Quality Data

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

Sierra Research, Inc. (“Sierra Research”) is requesting confidential designation for a Microsoft Excel spreadsheet, including but not limited to the proprietary equations, formulas, and calculations contained therein, used to produce the air quality data and analysis submitted by Rio Mesa Solar I, LLC, Rio Mesa Solar II, LLC, and Rio Mesa Solar III, LLC in response to the CEC Staff’s Data Request Number 16 in proceeding number 11-AFC-4.

To be clear, the results of the equations, formulas, and calculations contained in the Microsoft Excel spreadsheet are included in the AFC as Appendix 5.1B. Sierra Research agrees that Appendix 5.1B is not subject to confidential treatment. Instead, this request asks that the equations, formulas, and calculations contained in the Microsoft Excel spreadsheet be kept confidential for the reasons set forth herein.

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 proprietary and confidential information identified therein as confidential trade secrets as described below. Sierra Research understands that the CEC is in the process of executing agreements with Staff regarding data disclosure, and that the CEC will ensure that any Staff member who accesses this information will be informed of their responsibility to keep such information protected and confidential, and of the consequences of disclosure.

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:

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(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).)

The equations, formulas, and calculations contained in the Microsoft Excel spreadsheet constitute Sierra Research's trade secrets as defined by the California Civil Code, and are thus exempt from disclosure under the Public Records Act. This information qualifies as a trade secret under Section 3426.1(d) of the California Civil Code for the reasons explained below.

First, this information has an independent economic value to Sierra Research, as this information provides the basis for the air quality data and analysis produced by Sierra Research, and has taken substantial time and resources for Sierra Research to develop. Access to this information by others, such as competitors, would allow the user to derive an economic value from disclosure or use, as the user could use the information to produce air quality data and analysis in return for payment, or in lieu of paying Sierra Research for such analysis. Furthermore, disclosure of the information would give such a user a business advantage, as the information would give the user the ability to produce air quality data and analysis using Sierra Research's proprietary methods, without the expenditure of time and resources that Sierra Research has invested to develop such equations, formulas, and calculations.

Second, this information is subject to efforts to maintain its secrecy: this information has never been released publicly, and is used by and available only to (1) employees of Sierra Research, who are instructed not to publicly disclose this information, or (2) to consultants to Sierra Research who have signed a confidentiality/ nondisclosure agreement with Sierra Research. Furthermore, Sierra Research is providing this information to CEC staff on the condition that it will not be made public or provided to any outside party, or used by anyone at the CEC for personal gain.

This information is also subject to confidential designation under the Commission's

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regulations, as this information is a trade secret, as described above. Moreover, disclosure of this information would cause a loss of competitive advantage to Sierra Research. Disclosure of Sierra Research's proprietary equations, formulas, and calculations to the public would allow Sierra Research's competitors and others to review and obtain Sierra Research's proprietary equations, formulas, and calculations for free, rather than for the full monetary value of such information.

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; there is no feasible method, however, of aggregating or masking the information that would not either disclose the information or render the information provided useless. The results of calculations performed using the information has previously been provided to Commission staff in the Portable Document Format (PDF). In this format, the results of the calculations are presented while protecting the proprietary equations, formulas, and calculations. Sierra Research has no objection to the continued distribution of PDF versions of the results of calculations to the public.

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.*

Sierra Research has not disclosed any of the subject information to anyone other than its employees or to consultants who have signed a confidentiality/nondisclosure agreement with Sierra Research.

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: April 16, 2012

Sierra Research, Inc.

By: _____


GARY RUBENSTEIN
Senior Partner