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March 16, 2012

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

COMPLETED

<b>DOCKET</b> 11-AFC-04
<b>DATE</b> MAR 16 2012
<b>RECD.</b> MAR 16 2012

Re: Rio Mesa Solar I, LLC, Rio Mesa Solar II, LLC and Rio Mesa Solar III, LLC ("Applicant")  
Application for Confidential Designation of Portions of the Power Purchase Agreement  
submitted pursuant to Staff Data Requests 25, 26 and 27 concerning Rio Mesa SEGF (11-  
AFC-04)

Dear Mr. Oglesby:

Pursuant to Title 20 California Code of Regulations (CCR) Sections 2501 *et seq.*, the Applicant hereby submits this "Application for Confidential Designation" for portions of its Power Purchase Agreement in response to Staff Data Requests 25 and 27. Staff Data Request 26 is related to responses for Staff Data Requests 25 and 27, but Data Response 26 is not itself confidential. The CDs that accompany this package only contain data for Staff Data Requests 25 and 27.

Please feel free to contact us at (916) 447-2166 should you have any questions or require additional information. Thank you for your consideration of the Applicant's request.

Sincerely,

Brian S. Biering  
Christopher T. Ellison  
Ellison, Schneider & Harris

Attorneys for the Applicant

COMPLETED

**APPLICATION FOR CONFIDENTIAL DESIGNATION**  
**Rio Mesa Solar Electric Generating Facility – [11-AFC-04]**  
**Rio Mesa Solar I, LLC and Rio Mesa Solar II, LLC, and Rio Mesa Solar III, LLC**  
**(the “Applicant”)**

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

Portions of the Brightsource Energy Power Purchase Agreement submitted in response to Staff Data Requests 25 and 27.

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. The disclosure of this information would also violate the confidential provisions of the Power Purchase Agreement.

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.*

Staff’s Data Request 25 states “If any of the requested information is sensitive material, staff would support a request that the filing be treated as confidential.” 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 excerpts of the power purchase agreements contain confidential information which is protected from disclosure by a confidentiality provision, and considered by the parties to be trade secret because it is information that provides a competitive advantage to its users.

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, 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.


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 employees, attorneys and consultants working on the Rio Mesa Solar Electric Generating Facility. Moreover, this information has not been disclosed to persons employed by or working for Applicant except on a "need-to-know" basis. It is my understanding that the Applicant is marking this information as "confidential," instituting a policy that it be segregated from other Rio Mesa Solar Electric Generating Facility files, and requiring that access to it be restricted to a designated confidential information manager within Applicant or its attorneys, consultants, and agents.

*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: March 16, 2012

ELLISON, SCHNEIDER & HARRIS LLP

By:   
Brian S. Biering  
Ellison, Schneider & Harris L.L.P.  
Attorneys for Applicant