

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

February 13, 2009

Jane Luckhardt  
Downey Brand, LLP  
621 Capitol Mall, 18<sup>th</sup> Floor  
Sacramento CA 95814

<b>DOCKET</b>	
08-AFC-2	
DATE	FEB 13 2009
RECD.	FEB 13 2009

RE: **Beacon Solar, LLC**  
**Application for Confidentiality**  
**Docket No. 08-AFC-2**

Dear Ms. Luckhardt:

On January 13, 2009, you filed an Application for Confidentiality on behalf of Beacon Solar, LLC ("Beacon"). The Application seeks confidentiality for information related to Beacon's analysis of dry and wet cooling technologies and the feasibility, costs, and penalties associated with those technologies. Specifically, Beacon requests confidentiality of the following Appendices (hereinafter referred to as "Appendices"):

- A. Wet Cooling Tower Budgetary Quote;
- B. ACC Budgetary Quote;
- C. Hybrid Cooling System Budgetary Quote;
- E. Water Treatment Capital and O&M Cost Comparison;
- I. Life Cycle Cost Analysis;
- K. Dry Cooling Performance Data; and
- L. Hybrid Cooling Data

You state that failure to designate the Appendices as confidential would place Beacon at a competitive disadvantage, as the cost data compiled therein would provide competitors with detailed information about Beacon's approach and strategic philosophies in evaluating the cost feasibility of dry and hybrid cooling technology verses the alternatives. You further state that:

The appendices also include confidential bids from vendors for equipment options that Beacon Solar cannot reveal publicly. . . . Beacon Solar believes that widespread availability of this information could provide competing solar power generators with insight into Beacon Solar's cost structure, evaluation of efficiency and overall system impacts from wet, dry and hybrid cooling options, and the costs associated with these various options, thereby increasing Beacon Solar's competition in the area of trough-based power plants. . . The Appendix provides insight into how Beacon Solar evaluates and selects solar power plant design options . . . competitors . . . would be able to analyze how, where, and why Beacon

Solar sites, designs and constructs its solar power plants [and] could gain an unfair advantage over Beacon Solar when, for example, deciding to design or locate their own generation facilities. . . the methods and processes by which each generator analyzes the best possible design and location for these plants is complex and necessarily impact the efficiency and cost-benefit margins of the plants.

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.)

Additionally, the California Environmental Quality Act ("CEQA) at Public Resources Code section 21160, provides that if trade secrets are provided by an applicant to a public agency to enable the public agency to determine whether a proposed project may have a significant effect on the environment, that information should not be disclosed by any public agency. CEQA states that for purposes of that section, "trade secret" is defined in Government Code section 6254.7 of the Public Records Act. That section of the Public Records Act defines "Trade Secrets" as:

any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, 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 having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

Beacon has made a reasonable claim that the Appendices as compiled contain trade secrets, as they contain information used in business that give Beacon an opportunity to obtain an advantage over competitors who do not know the information contained in the Appendices. The Appendices consist of information that Beacon has paid to obtain and analyze, that is not generally known to the public. As such, the Appendices will be kept

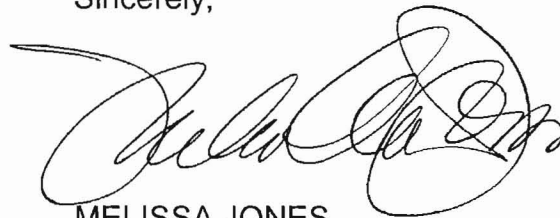
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confidential for five years, until February 28, 2014.

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 Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melissa Jones', written in a cursive style.

MELISSA JONES  
Executive Director

cc: Docket Unit  
Eric K. Solorio, Project Manager