

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

February 25, 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 25 2009
RECD.	FEB 25 2009

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

Dear Ms. Luckhardt:

On January 20, 2009, you filed an Application for Confidentiality on behalf of Beacon Solar, LLC ("Beacon"). The Application seeks confidentiality for information related to Beacon's Revenue Data, which details Beacon's cost structure and anticipated returns using both dry and wet cooling.

You state that failure to designate the Revenue Data as confidential would place Beacon at a competitive disadvantage, as it evidences Beacon's corporate-specific cost structure, project returns, margins, method of analyzing the financial feasibility of power plants using wet and dry cooling technologies. You further state that:

Beacon Solar believes that widespread availability of this information would provide competing solar power generators with insight into Beacon Solar's cost structure, price point assumptions, projected returns and profit margins, and its corporate-specific methodologies for evaluating the financial feasibility of wet versus dry cooling options, thereby increasing Beacon Solar's competition in the area of utility-scale solar power plants. Competitors could use this information to better estimate the costs and pricing structure of Beacon Solar and use this information in competitive bids to Beacon Solar's detriment . . . competitors could gain an unfair advantage over Beacon Solar when submitting competitive bids for supplying renewable power, effectively precluding Beacon Solar from succeeding on any level in the competitive merchant power generator industry.

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 Revenue Data contains 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 uses to evaluate the financial feasibility and desirability of its power plant siting and design options, that is not generally known to the public. As such, the Revenue Data will be kept confidential for five years, until March 1, 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

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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