

STATE OF CALIFORNIA
California Energy Commission

DOCKET

08-AFC-2

DATE NOV 03 2009

RECD NOV 03 2009

In the Matter of:

The Application for Certification for the
BEACON SOLAR ENERGY PROJECT

Docket No. 08-AFC-2

**CALIFORNIA UNIONS FOR RELIABLE ENERGY
PETITION FOR INSPECTION AND COPYING OF RECORDS
FOR THE BEACON SOLAR ENERGY PROJECT**

November 3, 2009

Tanya A. Gulesserian
Marc D. Joseph
Elizabeth Klebaner
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660 Voice
(650) 589-5062 Facsimile
tgulesserian@adamsbroadwell.com

Attorneys for the CALIFORNIA UNIONS
FOR RELIABLE ENERGY

STATE OF CALIFORNIA

California Energy Commission

In the Matter of:

The Application for Certification for the
BEACON SOLAR ENERGY PROJECT

Docket No. 08-AFC-2

**CALIFORNIA UNIONS FOR RELIABLE ENERGY
PETITION FOR INSPECTION AND COPYING OF RECORDS
FOR THE BEACON SOLAR ENERGY PROJECT**

Pursuant to section 2506 of Title 20 of the California Code of Regulations, California Unions for Reliable Energy (“CURE”) petitions for inspection and copying of (1) Confidential Appendix C to the Alternatives section of the Final Staff Assessment (“FSA”) for the Beacon Solar Energy Project (“Project”), (2) Beacon Solar LLC’s “Dry Cooling Appendices”¹ and Beacon’s “revenue data.”² CURE seeks to review the requested records to enable CURE to provide fully informed testimony and cross-examination of

¹ Dry Cooling Appendices includes Wet Cooling Tower Budgetary Quote, ACC Budgetary Quote, Hybrid Cooling System Budgetary Quote, Water Treatment Capital and O&M Cost Comparison, Life Cycle Cost Analysis, Dry Cooling Performance Data, and Hybrid Cooling Data (Letter in Responses to Application for Confidentiality, In the Matter of the Application for Certification for the Beacon Solar Energy Project, Docket No. 08-AFC-2 (Feb. 13, 2009), p.1.)

² Application for Confidential Designation of Revenue Data, In the Matter of the Application for Certification for the Beacon Solar Energy Project, Docket No. 08-AFC-2 (Jan. 20, 2009); Application for Confidential Designation Resubmission of Confidential Revenue Data, In the Matter of the Application for Certification for the Beacon Solar Energy Project, Docket No. 08-AFC-2, (Mar. 2, 2009).

witnesses regarding the feasibility of dry cooling technology and non-potable water sources.

CURE is not a competitor nor power-plant developer. Therefore, release of the confidential information to CURE would not place Beacon at a competitive disadvantage. In order to maintain confidentiality, CURE proposes to enter into a nondisclosure agreement with Beacon. A proposed nondisclosure agreement is attached as Exhibit A.

II. DISCUSSION

On October 22, 2009, Commission Staff released the FSA for the Project. The FSA includes Staff's analysis of alternative cooling technology and sources of non-potable water for the Project.³ In Confidential Appendix C, Staff provides a project cost analysis of the various alternatives. Specifically, Staff created three separate revenue models reflecting the marginal project costs of power plant cooling and non-potable water alternatives. Staff's analysis uses a confidential revenue model submitted by Beacon to Staff.⁴

Beacon submitted three applications for confidential designation that are related to this analysis. Specifically, Beacon requested confidential information for its "Dry Cooling Appendices,"⁵ "Revenue Data," and Revenue

³ *Id.* at pp. 6-12-6-13.

⁴ *Id.* at pp. 6-12-6-13.

⁵ Wet Cooling Tower Budgetary Quote, ACC Budgetary Quote, Hybrid Cooling System Budgetary Quote, Water Treatment Capital and O&M Cost Comparison, Life Cycle Cost Analysis, Dry Cooling Performance Data, and Hybrid Cooling Data (Letter in Responses to Application for Confidentiality, In the Matter of the Application for Certification for the Beacon Solar Energy Project, Docket No. 08-AFC-2 (Feb. 13, 2009), p.1.

Data-2.⁶ Beacon requested confidential designation for the Dry Cooling Appendices on the ground that disclosure of its analyses of the comparative feasibility of cooling technologies would place Beacon at a competitive disadvantage with regard to competitor power-plant developers.⁷ Similarly, Beacon stated that the revenue data has information on the Project's cost structure, price point assumptions, projected returns and profit margins, and its corporate-specific methodologies for evaluating the relative feasibility of cooling technologies.⁸ As such, Beacon argued that the information should be protected from public disclosure because it contains trade secrets.⁹ The Commission granted Beacon's applications.¹⁰

CURE petitions to inspect and copy Staff's Confidential Appendix C and Beacon's Dry Cooling Appendices and Revenue Data so that CURE can prepare testimony and examine witnesses on the environmental impacts of the Project and alternatives. Disclosure of the requested documents to CURE will not create a competitive advantage, because CURE is not a power plant developer. CURE is a coalition of unions whose members construct and

⁶ Application for Confidential Designation of Revenue Data, In the Matter of the Application for Certification for the Beacon Solar Energy Project, Docket No. 08-AFC-2 (Jan. 20, 2009).

⁷ Application for Confidential Designation of Dry Cooling Report Appendices, In the Matter of the Application for Certification for the Beacon Solar Energy Project, Docket No. 08-AFC-2, (Jan. 13, 2009).

⁸ Application for Confidential Designation of Revenue Data, In the Matter of the Application for Certification for the Beacon Solar Energy Project, Docket No. 08-AFC-2 (Jan. 20, 2009), p.1; Application for Confidential Designation Resubmission of Confidential Revenue Data, In the Matter of the Application for Certification for the Beacon Solar Energy Project, Docket No. 08-AFC-2, (Mar. 2, 2009), p.1.

⁹ *Id.*

¹⁰ Letter in Responses to Application for Confidentiality, In the Matter of the Application for Certification for the Beacon Solar Energy Project, Docket No. 08-AFC-2 (Feb. 13, 2009), pp. 2-3.

operate power plants in California. CURE intervened in this proceeding, because the Project directly affects the union members' economic and environmental interests.¹¹ Specifically here, using limited fresh water could reduce the environmental carrying capacity of the state. This reduces future employment opportunities. In contrast, well designed projects that reduce environmental impacts of electricity generation improve long-term economic prospects. CURE's ability to exercise its rights as party is dependent on thorough review of the assumptions and analyses underlying the FSA.

To maintain confidentiality of the documents, CURE proposes to enter into a nondisclosure agreement with Beacon. The purpose of the nondisclosure agreement is to ensure that the requested materials will remain confidential and will not be used except as necessary to participate in the proceeding. CURE's counsel and consultants have routinely been parties to nondisclosure agreements in CPUC proceedings and are experienced at protecting confidential, highly market sensitive information from public disclosure.

III. CONCLUSION

Because CURE is not a competitor, power plant developer and is willing to enter into a non-disclosure agreement with Beacon, CURE requests that the Commission grant CURE's petition to inspect and copy Confidential Appendix C and Beacon's Dry Cooling Appendices and Revenue Data. The

¹¹ Petition to Intervene by California Unions for Reliable Energy, In the Matter of the Application for Certification for the Beacon Solar Energy Project, Docket No. 08-AFC-2 (May 12, 2008).

requested information is necessary for CURE to fully exercise its rights as a party in this proceeding.

Dated: November 3, 2009

Respectfully submitted,

_____/s/_____
Tanya A. Gulesserian
Marc D. Joseph
Elizabeth Klebaner
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660 Voice
(650) 589-5062 Facsimile
tgulesserian@adamsbroadwell.com

Attorneys for the CALIFORNIA UNIONS
FOR RELIABLE ENERGY

PROOF OF SERVICE

I, Bonnie Heeley, declare that on November 3, 2009 I served and filed copies of the attached **California Unions for Reliable Energy Petition for Inspection and Copying of Records for the Beacon Solar energy Project**. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at www.energy.ca.gov/sitingcases/beacon. The document has been sent to both the other parties in this proceeding as shown on the Proof of Service list and to the Commission's Docket Unit electronically to all email addresses on the Proof of Service list and by depositing in the U.S. Mail at South San Francisco, CA with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses NOT marked "email preferred." I also sent a copy via email and an original and one copy via U.S. mail to the California Energy Commission Docket Office.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA on November 3, 2009.

_____/s/_____
Bonnie Heeley

CALIFORNIA ENERGY COMMISSION
ATTN DOCKET NO. 08AFC2
1516 NINTH STREET MS4
SACRAMENTO, CA 95814-5512
docket@energy.state.ca.us

TANYA A. GULESSERIAN
tgulesserian@adamsbroadwell.com
(email only)

SSARA HEAD, VICE PRESIDENT
AECOM ENVIRONMENT
1220 AVENIDA ACASO
CAMARILLO, CA 93012
Sara.head@aecom.com

BILL PIETRUCHA, PROJECT MGR
JARED FOSTER, P.E., MECH. ENG.
WORLEY PARSONS
2330 E. BIDWELL ST SUITE 150
FOLSOM, CA 95630
Bill.Pietrucha@worleyparsons.com
Jared.Foster@worleyparsons.com

JANE LUCKHARDT
DOWNEY BRAND ATTORNEYS LLP
621 CAPITOL MALL 18TH FLR
SACRAMENTO, CA 95814
jluckhardt@downeybrand.com

KAREN DOUGLAS
CALIFORNIA ENERGY
COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
KLdouglas@energy.state.ca.us

JEFFREY D. BYRON
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
Jbyron@energy.state.ca.us

KENNETH CELLI
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
kcelli@energy.state.ca.us

ERIC K. SOLOORIO
CALIFORNIA ENERGY
COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
esolorio@energy.state.ca.us

JARED BABULA
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
jbabula@energy.state.ca.us

California ISO
e-recipient@caiso.com
(email only)

PUBLIC ADVISER'S OFFICE
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
publicadviser@energy.state.ca.us

DIANE FELLMAN
DIRECTOR WEST REGION
NEXTERA ENERGY RESOURCES
234 VAN NESS AVENUE
SAN FRANCISCO, CA 94102
Diane.fellman@nexteraenergy.com

S. BUSA, K. STEIN, M. RUSSELL,
D. MCCLOUD, G. NARVAEZ
NEXTERA ENERGY RESOURCES LLC
700 UNIVERSE BLVD
JUNO BEACH, FL 33408
Scott.Busa@Nexteraenergy.com
Kenneth.Stein@Nexteraenergy.com
Meg.Russell@Nexteraenergy.com
Duane.McCloud@Nexteraenergy.com
Guillermo.Narvaez
@Nexteraenergy.com

STATE OF CALIFORNIA

California Energy Commission

In the Matter of:

The Application for Certification for the
BEACON SOLAR ENERGY PROJECT

Docket No. 08-AFC-2

**NON-DISCLOSURE AGREEMENT REGARDING
CONFIDENTIALITY OF COOLING AND NON-
POTABLE WATER ALTERNATIVES AND
RELATED REVENUE DATA**

1. This Non-Disclosure Agreement (NDA) is entered into between Beacon Solar LLC (Beacon) and California Unions for Reliable Energy (CURE, as defined herein). This NDA shall govern access to and the use of all Confidential Records of Beacon in California Energy Commission (Commission or CEC) Docket No. 08-AFC-2, as hereinafter defined. Notwithstanding any order terminating this docket, this NDA shall remain in effect unless lifted by Beacon pursuant to paragraph 10 below.

2. Definitions –

- a. The term “FSA” shall mean Final Staff Assessment as that term is used in Docket 08-AFC-2.
- b. The term “Project” shall mean the Beacon Solar Energy Project as described in Docket 08-AFC-2.
- c. The term “redacted” refers to situations in which confidential or proprietary information in a document, whether the document is in paper or electronic form, has been covered, masked or blocked out. The term “un-redacted” refers to situations in which confidential or proprietary information in a document, whether in paper or electronic form, has not been covered, masked or blocked out.
- d. The term “Confidential Records” means the confidential or proprietary information contained in the unredacted version, and not contained in the redacted version, of any of the following: FSA, including all attachments and appendices, filed in 08-AFC-2; dry cooling appendices, including Wet Cooling Tower Budgetary Quote, ACC Budgetary Quote, Hybrid Cooling System Budgetary Quote,

Water Treatment Capital and O&M Cost Comparison, Life Cycle Cost Analysis, Dry Cooling Performance Data, and Hybrid Cooling Data as described in Beacon's Application for Confidential Designation of Dry Cooling Report Appendices, In the Matter of the Application for Certification for the Beacon Solar Energy Project, Docket No. 08-AFC-2 (Jan. 13, 2009) and revenue data as described in Beacon's Application for Confidential Designation of Revenue Data, In the Matter of the Application for Certification for the Beacon Solar Energy Project, Docket No. 08-AFC-2 (Jan. 20, 2009) and Application for Confidential Designation Resubmission of Confidential Revenue Data, In the Matter of the Application for Certification for the Beacon Solar Energy Project, Docket No. 08-AFC-2, (Mar. 2, 2009).

- e. "Confidential Records" shall also include: (A) any information contained in or obtained from the unredacted materials described in the preceding paragraph; (B) any other materials that are made subject to this NDA by the Commission, the Committee, or any designee of such, pursuant to applicable regulations, or by any court or other body having appropriate authority. Beacon, when creating any Confidential Records, shall physically mark such records on each page (or in the case of non-documentary materials such as computer diskettes, on each item) as "CONFIDENTIAL RECORDS," or with words of similar import as long as one or more of the terms "Confidential Records" or "Confidential" is included in the designation to indicate that the materials in question are Confidential Records.
- f. Confidential Records shall not include: (A) any information or document contained in the public files of the CEC or any other state or federal agency, or in any state or federal court, unless such information or document has been determined to be protected by such agency or court; or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this NDA.
- g. The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto as Appendix A by which persons shall be granted access to the Confidential Records. Such persons shall, as a condition of such access, certify their understanding that such access is provided pursuant to the terms and restrictions of this NDA, and that such persons have read such NDA and agree to be bound by it. All Non-Disclosure Certificates shall be sent to and retained by Beacon.

- h. The term CURE shall refer to California Unions for Reliable Energy. By executing this NDA, CURE represents (1) that it is not an entity that engages in the supply of power plant products, or an association comprised of entities that engage in such activities, or any affiliate of such an entity or association; (2) that it is not an entity engaged in the activities related to submitting bids or negotiation of contracts related to Beacon's Project; and (3) that it is not an entity engaged in consulting or advising other entities on the supply of power plant projects or submitting bids or negotiation of contracts related to Beacon's Project.
- i. The term "CURE Reviewing Representative" shall mean a person who is
 - 1. An officer of CURE whose duties involve assisting CURE in preparing for or participating in Docket 08-AFC-2; or an attorney, paralegal, consultant or employee of a consultant retained by CURE for the purpose of advising, preparing for or participating in Docket 08-AFC-2.
 - 2. Approved by Beacon pursuant to the following process: CURE shall identify its proposed Reviewing Representatives to Beacon. Upon request by Beacon, CURE shall provide a *curriculum vitae* of any particular candidate. Beacon shall advise CURE in writing if Beacon objects to any proposed Reviewing Representative, setting forth in detail the reasons therefore.
 - 3. Access of CURE Reviewing Representatives to Confidential Records shall be granted only pursuant to the terms of this NDA.
- j. Confidential Records shall be treated as confidential by each CURE Reviewing Representative in accordance with the certificate executed pursuant to Paragraphs 2.g and 4 hereof.
- k. Confidential Records shall not be used except as necessary for the conduct of Docket No. 08-AFC-2, and shall not be disclosed in any manner to any person except other CURE Reviewing Representatives who are engaged in this proceeding and need to know the information in order to carry out their responsibilities.
- l. In the event CURE is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand

or similar process) to disclose any Confidential Records, CURE agrees to oppose disclosure on the grounds that the requested information has been designated as Confidential Records subject to this NDA and therefore may not be disclosed. CURE shall also immediately inform Beacon of the request, and Beacon may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and CURE shall cooperate with Beacon to the maximum extent practicable to either oppose the disclosure of the Confidential Records consistent with applicable law, or obtain confidential treatment of Confidential Records by the entity that wishes to receive the Confidential Records prior to any such disclosure.

3. It shall be a rebuttable presumption that (i) any study that incorporates, describes or otherwise employs Confidential Records in a manner that could reveal all of a part of the Confidential Records, or (ii) any model that relies upon Confidential Records for algorithms or other computation(s) critical to the functioning of the model, shall also be considered Confidential Records subject to this NDA. However, models that merely use Confidential Records as inputs will not themselves be considered Confidential Records. It shall also be a rebuttable presumption that where the inputs to studies or models include Confidential Records, or where the outputs of such studies or models reveal such inputs or can be processed to reveal the Confidential Records, such inputs and/or outputs shall be considered Confidential Records subject to this NDA, unless such inputs and/or outputs have been redacted or aggregated to the satisfaction of Beacon. Unless the Commission, Committee, or Designee issues a ruling holding that the applicable presumption(s) from among the foregoing has been rebutted with respect to the model or study at issue, then any model or study devised or performed by CURE that incorporates, uses or is based upon Confidential Records shall also be Confidential Records subject to the terms of this NDA.

4. No CURE Reviewing Representative shall be permitted to inspect, participate in discussions regarding, or otherwise be granted access to Confidential Records pursuant to this NDA unless such CURE Reviewing Representative has first executed a Non-Disclosure Certificate and it has been delivered to Beacon. Upon request, Beacon shall provide copies of executed Non-Disclosure Certificates to Commission Staff. Attorneys qualified as CURE Reviewing Representatives shall ensure that persons under their supervision or control comply with this NDA.

5. In the event that a CURE Reviewing Representative to whom Confidential Records are disclosed ceases to be engaged in proceedings in this docket, then access to Confidential Records by that person shall be terminated. Even if no longer engaged in such proceedings, every such person shall continue to be bound by the provisions of this NDA and the Non-Disclosure Certificate.

6. All documents containing Confidential Records that are filed with the Commission or served shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are filed or served under seal pursuant to this NDA. Such documents shall be marked with the words “**CONFIDENTIAL RECORDS**” or one of the other, similar terms set forth in paragraph 2.e hereof, and shall be served upon all CURE Reviewing Representatives and persons employed by or working on behalf of the CEC who are eligible to see the Confidential Records.

7. Nothing in this NDA shall be construed as limiting the right of Beacon or CURE from objecting to the use of Confidential Records on any legal ground, such as relevance or privilege.

8. All Confidential Records filed with judicial or administrative bodies other than the Commission, whether in support of or as part of a motion, brief or other document or pleading, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Confidential Records that are subject to this NDA.

9. Neither Beacon nor CURE waives its rights to pursue any other legal or equitable remedy that may be available in the event of actual or anticipated disclosure of Confidential Records.

10. Beacon may agree at any time to remove the “Confidential Records” designation from any material if, in Beacon’s sole opinion, its confidentiality is no longer required. In such a case, Beacon will notify CURE of the change of designation.

Dated November ____, 2009, at South San Francisco, California.

BY: _____

BY: _____

On Behalf of Beacon Solar LLC

On Behalf of California Unions for
Reliable Energy

APPENDIX A

STATE OF CALIFORNIA

California Energy Commission

In the Matter of:

The Application for Certification for the
BEACON SOLAR ENERGY PROJECT

Docket No. 08-AFC-2

NON-DISCLOSURE CERTIFICATE

I, _____, have been asked by _____ (California Unions for Reliable Energy (CURE)) to inspect certain materials that have been designated as “Confidential Records” under Paragraph 2 of the Non-Disclosure Agreement (NDA) entered into between Beacon Solar LLC (Beacon) and CURE dated _____, 2009.

1. I hereby certify my understanding that access to Confidential Records is provided to me pursuant to the terms and restrictions of the NDA, that I have been given a copy of and have read the NDA, and that I agree to be bound by it. I understand that the contents of the Confidential Records, any notes or other memoranda, or any other form of information that copies or discloses Confidential Records shall not be disclosed to anyone other than in accordance with the NDA.

2. I understand that my review of Confidential Records is solely for the purpose of participating in the above-captioned matter and that any other use or disclosure of Confidential Records by me is a violation of the NDA.

3. I hereby agree to submit to the exclusive jurisdiction of the California Energy Commission for the enforcement of the undertakings I have made hereby and I waive any objection to venue laid with the Commission for enforcement of the Order

Dated:

BY: _____

TITLE: _____

REPRESENTING: _____