

## CALIFORNIA ENERGY COMMISSION

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April 30, 2012

Scott A. Galati  
Galati Blek, LLP  
455 Capitol Mall, Ste 350  
Sacramento CA 95814

RE: **Application for Confidentiality  
Financial Information  
Genesis Solar Energy Project  
Docket No. 09-AFC-8**

<b>DOCKET</b>	
<b>09-AFC-8C</b>	
DATE	APR 30 2012
RECD.	MAY 02 2012

Dear Mr. Galati:

On April 9, 2012, Genesis Solar, LLC, filed an application for confidentiality to the above-captioned docket, on behalf of Genesis Solar Energy Project ("Applicant"). The Application seeks confidential designation for the entire document:

"response to CEC staff data request for Financial Information (2 pages)."

The Application notes that confidentiality is sought for the financial information that is a trade secret, proprietary and subject to contractual terms with third parties that require it to be kept confidential. The Application identifies the financial information as information that provides the Applicant with a competitive advantage over potential competitors who may not use the same costs or pricing information as the Applicant. The Applicant has never released the proprietary information publically.

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, § 1060.) 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.)

California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, the application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to the applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

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Applicant originally requested that the information be kept confidential indefinitely. Requests for indefinite grants of confidentiality are disfavored and closely reviewed. It is my understanding that after discussions with staff the Applicant is amenable to a term of confidentiality for the life of the facility, which typically estimated to be 30 years.

The Applicant does not believe the proprietary information can be aggregated to a level that would allow disclosure.

The Applicant has made a reasonable claim that the law allows the Energy Commission to keep financial information described above, confidential on the grounds that they are trade secrets and/or proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage.

For the above reasons, your request for confidential designation for the information/data submitted in response to Staff Data Request for Financial Information is granted. The information/data will remain confidential for the life of the facility, which is estimated to be 30 years.

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.

Please note that subsequently submitted information can be deemed confidential as specified in this letter without the need for a new application if you file a certification under penalty of perjury that the new information is substantially similar to the information granted confidentiality by this determination. California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4).

If you have any questions concerning this matter, please contact Jared Babula, Staff Counsel, at (916) 651-1462.

Sincerely,



Robert P. Oglesby  
Executive Director

cc: Docket Unit  
Eric Veerkamp, Energy Commission Project Manager  
Jared Babula, Energy Commission Senior Staff Counsel