

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512



January 14, 2010

Robert Gladden
Galati Blek, LLP
455 Capitol Mall, Ste 350
Sacramento CA 95814

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

DOCKET	
09-AFC-8	
DATE	JAN 14 2010
RECD.	JAN 21 2010

Dear Mr. Gladden:

On December 15, 2009, Genesis Solar, LLC, filed an application for confidentiality to the above-captioned docket, on behalf of Genesis Solar Energy Project (“Applicant”). The application seeks confidentiality for the document titled “Genesis Solar Energy Project Cooling Study,” consisting of seventy-six pages.

Applicant claims that the document identifies and details Applicant’s assessment, contacts, comparison and costs associated with the different cooling techniques. Furthermore, according to Applicant:

The information is a special compilation developed by (Applicant) and provides (Applicant) with an advantage over potential competitors who have not developed such a compilation of information and its use in assessment, methods and pricing strategies for development. Disclosure may reasonably hinder applicant’s economic and competitive advantage.

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.

Applicant has made a reasonable claim that the law allows the Commission to keep the above listed information confidential on the grounds that it is proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage. **As such, your request for confidential determination is temporarily granted, until such time as the Energy Commission's Staff Assessment becomes publicly available.**

You request that the information remain confidential "indefinitely or at least until cooling selection has been confirmed and all contractual negotiations are completed in order to protect the proprietary rights and work product contained therein." However, Applicant's request for confidentiality is only temporarily granted because the information may be required to be publicly disclosed in order for the public and interested agencies to gain a full understanding of any potential environmental impacts of the proposed project. At the time the Staff Assessment is published, the public's interest in disclosing information regarding any potentially significant environmental impacts of the proposed project will be substantial, and the public and interested parties may need to present evidence and testimony related to cooling technologies. At that time, the public's interest in disclosing the information will outweigh the interest in keeping the record confidential. Therefore, it is in your best interest to complete any ongoing negotiations by that time.

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).

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If you have any questions concerning this matter, please contact Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,

/S/

Melissa Jones
Executive Director

cc: Docket Unit
Mike Monosmith, Energy Commission Project Manager
Caryn Holmes, Energy Commission Counsel