

DOCKETED

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June 3, 2024

Via Email

Mahnaz Ghamati
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**Application for Confidential Designation: Mojave Solar Project
Docket No. 09-AFC-05C**

Dear Mahnaz Ghamati:

The California Energy Commission (CEC) has received Mojave Solar, LLC's (applicant) Application for Confidential Designation, docketed May 8, 2024 (TN 256231). The applicant is seeking confidential designation for detailed monthly inflow and outflow of water and megawatt-hour production information. This data was sent to CEC staff in response to a data request sent on April 3, 2024 (TN 255494) for the applicant's Petition to Amend to construct two new evaporation ponds.

A properly filed application for confidentiality shall be granted under 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 Commission to keep the record confidential."

Discussion

The application states that the detailed monthly inflow, monthly outflow, and megawatt-hour production information should be kept confidential for the operating life of the facility. The applicant states that this data is sensitive business information relating to the production of electricity by the facility that constitutes the applicant's trade secret. Also, the information contains details regarding specific water use, including inflow-outflow, to power production information on a granular level. These details are not readily available to the public, are only known to the applicant, its employees and contractors, and give the applicant an advantage over competitors who do not know the details of applicant's power production process. Further, the applicant provided aggregated forms of the information in their responses to the CEC's Data Request, which is publicly available on the proceeding's docket. The applicant requests that the CEC keep specific monthly breakdowns of the information confidential.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform

Trade Secrets Act. (Gov. Code, §§ 7927.705(k), 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

Civil Code section 3426.1(d) defines "trade secret" as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code, § 3426.1(d); See also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, 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.

The application addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) by stating:

- 1) *The specific nature of the advantage* – The data contains sensitive business information relating to the production of electricity by the facility that constitutes the applicant's trade secret. The data also contains information regarding specific water use, including inflow-outflow, to power production information on a granular level that is not readily available to the public.
- 2) *How the advantage would be lost* – Not disclosing this information gives the applicant an advantage over competitors who do not know the specific details of the applicant's power production process. Disclosing this information could affect market competition and thus the price of electricity, placing consumers at a disadvantage.
- 3) *The value of the information to the applicant* – The data includes power production information on a granular level that is not readily available to the public and could impact market competition and the price of electricity.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information is only known to the applicant and its employees and contractors.

Executive Director's Determination

The applicant has made a reasonable claim that the information detailed above, including monthly inflow and outflow of water and megawatt-hour production contains trade secrets. As such, the applicant's request for confidential designation of the data listed above is granted for the life of the facility.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a stylized flourish at the end.

Drew Bohan
Executive Director