

DOCKETED

Docket Number:	24-OPT-03
Project Title:	Soda Mountain Solar
TN #:	258578
Document Title:	CEC Response Letter to Soda Mountain Solar LLC re Confidentiality Application, dated July 23, 2024
Description:	N/A
Filer:	Ngoc Tran
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	8/20/2024 11:04:12 AM
Docketed Date:	8/20/2024



August 20, 2024

Via Email

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**Application for Confidential Designation: Soda Mountain Solar Project
Docket No. 24-OPT-03**

Dear Michael Cocchimiglio:

The California Energy Commission (CEC) has received two Applications for Confidentiality from Soda Mountain Solar, LLC (applicant), docketed July 23, 2024 (TN257900 and TN257955) covering the following records:

TN 257900 relating to transmission planning.

- Los Angeles Department of Water & Power System Impact Restudy – July 2022
- Mead-Adelanto Project Large Generator Interconnection Agreement Among Southern California Public Power Authority

TN 257955 relating to sensitive biological and paleontological resources.

- Appendix A - Natural History Museum of Los Angeles County Paleontological Records Search
- Appendix C - California Natural Diversity Database

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."

1) System Impact Restudy and Large Generator Interconnection Agreement

The applicant states that the System Impact Restudy and Large Generator Interconnection Agreement contain sensitive information on the estimated and forecasted capital costs for the Soda Mountain Solar Project. The applicant asserts that this information constitutes trade secrets and requests that these documents be kept confidential in their entirety indefinitely. According to the application, the documents

contain commercially sensitive information including estimates for network upgrades, and interconnection facilities completion timing and costs associated with upgrades. The application also states that these documents are accessible only to employees, attorneys, or consultants working on behalf of the applicant and under confidentiality agreements.

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 documents contain sensitive information on the estimated and forecasted capital costs for the Soda Mountain Solar Project, including estimates for network upgrades and interconnection facilities completion timing and costs associated with upgrades.
- 2) *How the advantage would be lost* – Disclosure of the information may result in competitors ascertaining expected returns, capital cost components, and other details of the Soda Mountain Solar Project that would lessen the applicant’s negotiating power.
- 3) *The value of the information to the applicant* – The documents include commercially sensitive transmission planning and cost information related to the siting of a wind energy facility. Competitors could use this information to secure favorable agreements for themselves and reduce the applicant’s competitive

advantage in the renewable energy development industry. This could impact consumer energy prices.

- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information is accessible only to employees, attorneys, or consultants providing services to the applicant.

Executive Director's Determination

The applicant has made a reasonable claim that the documents listed above, relating to transmission planning can be maintained as confidential indefinitely. As such, the applicant's request for confidential designation of the documents listed above is granted.

2) California Natural Diversity Database Report and Paleontological Records Search

The applicant states that the documents contain information on locations of rare biological and paleontological resources and sites. The applicant requests that these documents be kept confidential in their entirety and for an indefinite period to protect the resources identified therein. The applicant asserts, under Government Code section 7922.000, that the public interest in nondisclosure of the biological and paleontological information outweighs disclosure because disclosing the information may enable entities to locate sensitive resources and collect or disturb those resources without authorization. The applicant further states that aggregating the information would hinder the CEC's staff review and analysis. The application notes that the information within these documents that can be aggregated and publicly disclosed will be provided in the proceeding's docket. The applicant states that these documents have not been disclosed to anyone other than its employees, attorneys, and consultants working on behalf of the applicant.

The California Public Records Act provides for the nondisclosure of archaeological site information and records of Native American places, features, and objects and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency. (Gov. Code, §§ 7927.000, 7927.005).

The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations on public lands must be protected to preserve them. (54 U.S.C. § 306131.)

The California Government Code section 7922.000 provides that an agency may withhold information from disclosure where the public interest served by nondisclosure clearly outweighs the public interest of disclosure

Executive Director's Determination

Protection of biological and paleontological resource location to prevent looting and unauthorized collection is in the public interest and expressly covered under the law. The applicant has made a reasonable claim that the documents identified above, containing information on biological and paleontological resources, records, reports, and maps can be maintained as confidential indefinitely. As such, the applicant's request for confidential designation of the documents listed above is granted.

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,



Drew Bohan
Executive Director