

<b>DOCKETED</b>	
<b>Docket Number:</b>	24-OPT-03
<b>Project Title:</b>	Soda Mountain Solar
<b>TN #:</b>	259211
<b>Document Title:</b>	CEC Response Letter to Soda Mountain's Application for Confidentiality socioeconomic
<b>Description:</b>	N/A
<b>Filer:</b>	Marianna Brewer
<b>Organization:</b>	California Energy Commission
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<b>Docketed Date:</b>	9/18/2024



September 18, 2024

**Via Email**

Michael Cocchimiglio  
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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 an Application for Confidentiality from Soda Mountain Solar, LLC (applicant), docketed August 15, 2024 (TN 258504) covering components of Appendix P, Socioeconomic Impacts on San Bernardino County of the Proposed Soda Mountain Project. Specifically, the applicant requests that highlighted text on pages 1-2, 15-17, 19-23 and 34-37 be kept confidential indefinitely.

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 [California Energy] Commission to keep the record confidential."

**Discussion**

The applicant requests that Appendix P be kept confidential in part because it includes worker compensation estimates, local, county and state tax revenue estimates, construction and operations cost information. The applicant claims that Appendix P should be kept confidential indefinitely due to confidential agreements between the applicant and third parties, as well as due to the competitive nature of the renewable development industry.

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 information includes estimates for the taxes generated during the construction and operational year of the Soda Mountain Project, which include estimated capital and/or operational cost(s) and/or pricing information and reflect the applicant's forecasted economic standing. The information is a trade secret due to the private and confidential nature of applicant's agreements with external parties. Favorable terms for these agreements are achieved through the negotiation process during which counterparties are only made aware of specific project cost details that are applicable to that counterparty.
2. *How the advantage would be lost* – Disclosure of the information would create a market disadvantage for the applicant by impacting the applicant's bargaining position during contract negotiations, providing competitors an advantage, and compromising the applicant's competitive position in the CAISO power market.
3. *The value of the information to the applicant* – Public disclosure of the information contained within Appendix P could harm the applicant's existing and future commercial opportunities. Preventing public disclosure would allow the applicant to continue to negotiate commercially favorable agreements with counterparties and operate the project in the most commercially competitive manner possible.
4. *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – This information is not publicly available and has not been disclosed to anyone other than the applicant's employees, attorneys, or consultants and only once such parties have executed confidentiality agreements. The data cannot be disclosed even if aggregated or masked due to the nature of capital and operational costs included in estimated taxes.

The applicant filed a redacted version of Appendix P to the proceeding's docket on August 15, 2024 (TN 258506). The CEC recognizes the need for confidentiality for the worker compensation estimates, local, county and state tax revenue estimates, and

construction and operations cost information to prevent reverse engineering by competitors and market disadvantage for the applicant.

**Executive Director's Determination**

The applicant has made a reasonable claim that the information listed above can be maintained as confidential indefinitely. As such, the applicant's request for confidential designation of the information 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](mailto:confidentialityapplication@energy.ca.gov).

Sincerely,

A handwritten signature in dark ink, appearing to be 'Drew Bohan', written in a cursive style.

Drew Bohan  
Executive Director