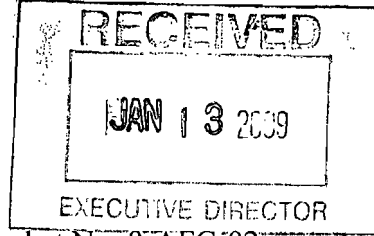


STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

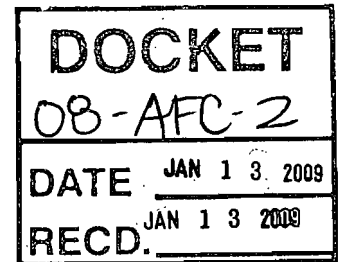


Docket No. 8-AFC-02

In the Matter of:

Beacon Solar, LLC's)
Application for Certification of the)
Beacon Solar Energy Project)

COMPLETED



APPLICATION FOR CONFIDENTIAL DESIGNATION OF
DRY COOLING REPORT APPENDICES

January 13, 2009

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**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
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**APPLICATION FOR CONFIDENTIAL DESIGNATION OF
DRY COOLING REPORT APPENDICES**

I. INTRODUCTION

Pursuant to Title 20 of the California Code of Regulations Section 2505, Beacon Solar, LLC (“Beacon Solar”), in connection with its Application for Certification (“AFC”) for the Beacon Solar Energy Project (“BSEP”), hereby submits this Application for Confidential Designation of the attached Appendices¹ to the Dry Cooling Report (collectively, “Appendix”). This Appendix forms the technical basis for the Dry Cooling Report submitted to the Commission last week. Failure to designate this Appendix as confidential would place Beacon Solar at a competitive disadvantage as the cost data compiled therein would provide competitors with detailed information about Beacon Solar’s approach and strategic philosophies in evaluating the cost feasibility of dry and hybrid cooling technology versus the alternatives.

¹ This application applies to the following Appendices in their entirety: A—Wet Cooling Tower Budgetary Quote; B—ACC Budgetary Quote; C—Hybrid Cooling System Budgetary Quote; E—Water Treatment Capital and O&M Cost Comparison; I—Life Cycle Cost Analysis; K—Dry Cooling Performance Data; and L—Hybrid Cooling Data. The application also applies to those portions of the following appendices that were not made available as part of the public filing: G—Wet Cooling Net Annual Generation Calculation; and H—ACC Net Annual Generation Calculation. However, the entire set of appendices, including Appendices D and F, for which Beacon Solar does not

II. Beacon Solar's Analysis of the Strategic Differences Between Dry and Wet Cooling Technologies Should be Kept Confidential as a Trade Secret.

The enclosed Appendix detailing Beacon Solar's analysis of dry and wet cooling technologies should be kept confidential as it evidences Beacon Solar's corporate-specific method and analysis of the feasibility, costs and penalties associated these technologies. The appendices also include confidential bids from vendors for equipment options that Beacon Solar cannot reveal publicly. The information compiled herein was prepared specifically for Beacon Solar, is not available to the general public, and public dissemination of this information would cause Beacon Solar to lose competitive advantage within the solar power plant market as competing electrical generators could easily usurp this information without having to develop or pay for preparation of this analysis. Beacon Solar believes that widespread availability of this information could provide competing solar power generators with insight into Beacon Solar's cost structure, evaluation of efficiency and overall system impacts from wet, dry and hybrid cooling options and the costs associated with these various options, thereby increasing Beacon Solar's competition in the area of trough-based power plants. Competitors could use this information to better estimate the costs and pricing structure of Beacon Solar and use this information in competitive bids to Beacon Solar's detriment. Beacon Solar requests that this report be kept confidential indefinitely as a trade secret, and pursuant to the statutory authorities set forth below.

The siting regulations expressly provide that an applicant may request confidentiality when faced with the possibility of revealing a trade secret or information that would result in the loss of a competitive advantage. (Cal. Code Regs., tit. 20, sec. 2505(a)(4).) Consistent with

seek confidential designation, is included here for purposes of cohesiveness and to facilitate comprehensive review of the information.

Siting Regulations, Section 6254 of the Government Code provides for nondisclosure of specific types of records. Section 6254(k) of the Government Code expressly excludes records that would be considered “privileged” under the Evidence Code. Under the Evidence Code, trade secrets are privileged. (Evid. Code § 1060.) Section 1061(a)(1) of the Evidence Code explains that a “trade secret” is defined as set forth in section 3426.1(d) of the Civil Code. That section provides that:

“Trade Secret” means information, including a formula, pattern, compilation, 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.

Under both the Civil Code definition and the Siting Regulations, specific formulas, methods or techniques developed and kept confidential by Beacon Solar that provide Beacon Solar with economic value are trade secrets.

Furthermore, as part of its application for confidentiality, Beacon Solar must state the “specific nature of the competitive advantage and how it would be lost, including the value of the information to the applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.” (Cal. Code Regs., tit. 20, sec. 2505(a)(4).) Beacon Solar’s information concerning the true costs and penalties associated with dry and hybrid cooling clearly constitute a trade secret that should be kept confidential by the Commission. The information contained in the Appendix could only be duplicated by others with knowledge of Beacon Solar’s corporate strategies and philosophies with regard to constructing and operating solar power generating stations. The Appendix is a compilation of information created by consultants hired by Beacon Solar to study these exact issues, as they

relate to Beacon Solar and its parent entities and subsidiaries' corporate-specific methods of designing and building solar power plants.

This Appendix provides insight into how Beacon Solar evaluates and selects solar power plant design options. Were Beacon Solar compelled to reveal this information, competitors, who have not been forced to reveal similar information, would be able to analyze how, where, and why Beacon Solar sites, designs and constructs its solar power plants. In the future, competitors could gain an unfair advantage over Beacon Solar when, for example, deciding to design or locate their own generation facilities. As the Commission is well aware, the methods and processes by which each generator analyzes the best possible design and location for these plants is complex and necessarily impact the efficiency and cost-benefit margins of the plants. Such costs directly affect the economics of a merchant power generator bidding into competitive load serving entity procurements and the competitive nature of the industry.

Beacon Solar is merely providing this information at this time and in this format in order to expedite the siting process. The Appendix was prepared by Beacon Solar's consultant, and forms the basis for the Dry Cooling Report previously provided to the Commission. Beacon Solar would not provide the underlying reports and details to the Commission but understands that staff may need to review this underlying technological data in conjunction with the Dry Cooling Report. Because the information in the Appendix is contained in an aggregated, non-confidential form in the Dry Cooling Report, which has already been made publicly available, there is no need to release the Appendix, and the information in the Appendix cannot be aggregated any further than it was in the Dry Cooling Report without losing its value in assisting the Commission's staff.

The information contained in the Appendix is known only to the employees of Beacon Solar, the consultants hired by Beacon Solar to assist in the preparation of the Dry Cooling Report, and Beacon Solar's attorneys. This information has not been publicly disclosed and has been carefully guarded. Were this information, which has very significant value to Beacon Solar made public, competitors of Beacon Solar would receive a tremendously gratuitous windfall of secret information, which they would have no difficulty copying and utilizing for their own benefit in the future.

Lastly, Beacon Solar emphasizes that the public will not be harmed in any way by the confidentiality of the Appendix, as the information contained therein is highly technical in nature and publicly available in an aggregated form. Hence, the inconvenience to the public is very minor in relation to the significant need for Beacon Solar to keep this information confidential.

III. Beacon Solar's Analysis of the Strategic Differences Between Dry and Wet Cooling Technologies Should be Kept Confidential Pursuant to California's Public Resources Code

In addition to the statutes and regulations outlined above, the Appendix also qualifies as confidential under the Public Resources Code. The AFC process for siting and licensing power plants is a Certified Regulatory Program under the provisions of the California Environmental Quality Act ("CEQA"). (*See* Pub. Res. Code § 21080.5.) Accordingly, certain provisions of CEQA, including those contained in Public Resources Code section 21160, are applicable to the AFC process.

Section 21160 provides, in part, that if trade secrets are provided by an applicant to a public agency to enable the public agency to determine whether a proposed project may have a significant effect on the environment, that information "shall not be included in the impact report

or otherwise disclosed by any public agency.” For purposes of section 21160, “trade secret” is defined in Section 6254.7 of the Government Code.

Government Code section 6254.7, also a part of California’s Public Records Act, provides that:

"Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

With reference to the discussion already set forth in the previous section of this application, clearly the information in the Appendix qualifies as a trade secret under this definition as well. The Appendix constitutes a compilation of information which is not patented, and which is known only to certain individuals within Beacon Solar, which are using it to design and produce articles and services having commercial value. Furthermore, the information gives Beacon Solar a business advantage over competitors who do not know or use it.

Accordingly, because the Appendix constitutes a trade secret under Government Code section 6254.7, and is being submitted to the Commission in order to enable it to determine whether the proposed BSEP may have a significant effect on the environment, the Appendix is specifically exempt from disclosure under Public Resources Code section 21160.

IV. CONCLUSION

Because Beacon Solar would be unfairly placed in a competitive disadvantage, and pursuant to the specific statutory protections set forth above, Beacon Solar requests that the Commission designate the attached Appendix as confidential. Compelling Beacon Solar to

disclose its detailed study regarding the true costs and penalties associated with dry and hybrid cooling technologies would be tantamount to requiring Beacon Solar to reveal trade secrets. Beacon Solar further requests that the Commission keep the Appendix confidential indefinitely.

Respectfully submitted,



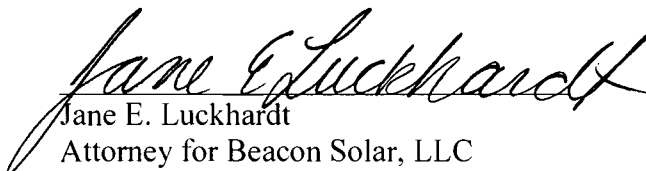
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January 13, 2009

DECLARATION OF JANE E. LUCKHARDT

I, Jane E. Luckhardt, attorney for Beacon Solar, LLC certify this Application for Confidential Designation of Appendices to the Dry Cooling Report on behalf of Beacon Solar, LLC, a limited liability company. I certify under penalty of perjury that the information contained in this Application for Confidential Designation is true, correct, and complete to the best of my knowledge. I am authorized to make this application and certification on behalf of Beacon Solar, LLC.

Signed:


Jane E. Luckhardt
Attorney for Beacon Solar, LLC

Dated: January 13, 2009