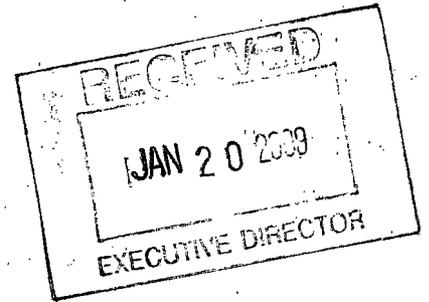


STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

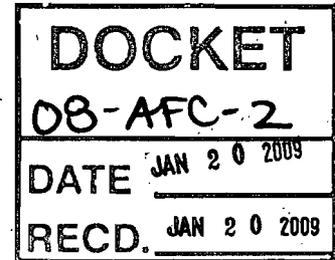


In the Matter of:

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

Docket No. 8-AFC-02

**COMPLETED**



APPLICATION FOR CONFIDENTIAL DESIGNATION OF  
REVENUE DATA

January 20, 2009

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**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

In the Matter of:

Beacon Solar, LLC's	)	
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**APPLICATION FOR CONFIDENTIAL DESIGNATION OF  
REVENUE DATA**

**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 Beacon Solar Energy Project Revenue Data (consisting of the enclosed data tables and summary letter) (hereinafter, collectively, “Revenue Data”). This confidential Revenue Data was specifically requested by California Energy Commission (“Commission”) staff, in order to assist with their evaluation of the BSEP. Failure to designate this Revenue Data as confidential would place Beacon Solar at a competitive disadvantage as the information compiled therein would provide competitors with detailed information about Beacon Solar’s cost structure, pricing assumptions, margins, and anticipated returns, enabling them to successfully and precisely underbid Beacon Solar in the highly competitive renewable power market.

## **II. Beacon Solar's Revenue Data Should be Kept Confidential as a Trade Secret.**

The enclosed Revenue Data detailing Beacon Solar's cost structure and anticipated returns using both wet and dry cooling technologies should be kept confidential as it evidences Beacon Solar's corporate-specific cost structure and project returns and margins, as well as its method of analyzing the financial feasibility of power plants built using each of these technologies and certain corporate-specific pricing assumptions necessary to such analysis. The information compiled herein was prepared internally by 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 utilize this information to successfully and precisely undercut and underbid Beacon in the market. Beacon Solar believes that widespread availability of this information would provide competing solar power generators with insight into Beacon Solar's cost structure, price point assumptions, projected returns and profit margins, and its corporate-specific methodologies for evaluating the financial feasibility of wet versus dry cooling options, thereby increasing Beacon Solar's competition in the area of utility-scale solar 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

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.

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 its cost structure, price point assumptions, projected returns and profit margins, and its corporate-specific methodologies for evaluating the financial feasibility of wet versus dry cooling options clearly constitute trade secrets that should be kept confidential by the Commission. The information contained in the Revenue Data could only be duplicated by others with internal knowledge of Beacon Solar’s corporate operations, strategies and philosophies with regard to constructing and operating solar power generating stations.

This Revenue Data provides insight into how Beacon Solar evaluates the financial feasibility and desirability of its power plant siting and 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 submitting competitive bids for supplying renewable power, effectively precluding Beacon Solar from succeeding on any level in the competitive merchant power generator industry.

Beacon Solar is merely providing this information at this time and in this format in order to expedite the siting process. Beacon Solar would not provide the attached Revenue Data and details to the Commission but understands that staff needs this information in order to complete its evaluation of the AFC for the BSEP. Unfortunately, the information in the attached Revenue Data cannot be aggregated without losing its value in assisting the Commission's staff.

The information contained in the Revenue Data is known only to the employees of Beacon Solar, specific consultants hired by Beacon Solar to assist in the siting, construction and operation, of its power plants, 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 hesitation or difficulty 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 Revenue Data, as the information contained therein is highly technical in nature, corporate-specific, and relevant only to Beacon Solar (and other merchant power

generators, were they able to obtain it). 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 Cost Implications of 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 Revenue Data 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 Revenue Data qualifies as a trade secret under this

definition as well. The Revenue Data constitutes detailed cost 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 may not have a detailed cost analysis for this project.

Accordingly, because the Revenue Data 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 Revenue Data is specifically exempt from disclosure under Public Resources Code section 21160.

#### IV. CONCLUSION

Because Beacon Solar would be unfairly placed in a competitive disadvantage were the enclosed information made public, and pursuant to the specific statutory protections set forth above, Beacon Solar requests that the Commission designate the attached Revenue Data as confidential. Compelling Beacon Solar to disclose its projected revenue data and cost structure associated with dry versus wet cooling technologies would be tantamount to requiring Beacon Solar to reveal trade secrets. Beacon Solar further requests that the Commission keep the Revenue Data confidential indefinitely.

Respectfully submitted,



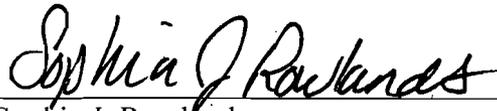
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January 20, 2009

## DECLARATION OF SOPHIA J. ROWLANDS

I, Sophia J. Rowlands, attorney for Beacon Solar, LLC certify this Application for Confidential Designation of the Beacon Solar Energy Project Revenue Data 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:

A handwritten signature in cursive script that reads "Sophia J. Rowlands". The signature is written in black ink and is positioned above a horizontal line.

Sophia J. Rowlands  
Attorney for Beacon Solar, LLC

Dated: January 20, 2009