

SUNRAY ENERGY, INC.

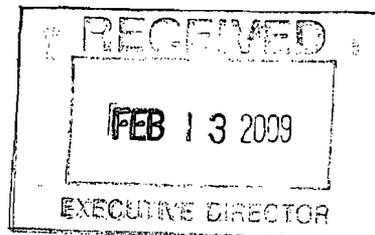
35100 Santa Fe Street, P.O. Box 338
Daggett, California 92327

Tel: (760) 254-3381
Fax: (760) 254-2813

DOCKET	
02-REN-1038	
DATE	FEB 10 2009
RECD.	FEB 13 2009

February 10, 2009

Executive Director
California Energy Commission
1516 9th Street, MS-39
Sacramento, CA 95814



Re: Request for Confidential Treatment of Information Submitted by Sunray Energy, Inc., in Connection with Application for Funding Eligibility – Existing Renewable Facilities Program (CEC-1250E-1).

COMPLETED

Docket Number 02-REN-1038

Dear Executive Director:

Sunray Energy, Inc. (“Sunray”) is requesting confidential treatment for certain information submitted in connection with its “Application for Funding Eligibility – Existing Renewable Facilities Program” and pursuant to a request from California Energy Commission staff for additional information. The Sunray response includes trade secrets and proprietary financial information, which if released would cause severe financial harm to the company and also severely undermine the company’s competitive position in the California energy marketplace. This proprietary information is entitled to confidential treatment under the California Public Records Act¹ and CEC confidentiality regulations.²

Sunray is applying to continue its participation in the CEC’s Existing Renewable Facilities Program, which provides financial incentive payments to support innovative renewable technologies. Sunray owns and operates two large solar generating facilities with the capacity to generate approximately 44 MWs of renewable energy.

None of the information for which Sunray is requesting confidential treatment is publicly available and its release would put Sunray at a significant competitive disadvantage. Sunray also notes that it is not seeking confidential treatment for any past-period data.

Section 2505 of the CEC regulations details the showing required for seeking confidential treatment of information. In accordance with the requirements of Section 2505(a)(1)(A) – (B), the information for which Sunray is seeking confidential treatment

¹ Public Records Act, California Government Code Sections 6250 – 6270.

² California Code of Regulations, Title 20, Section 2505.

is provided on separate pages from the information for which Sunray is not seeking confidential treatment and the confidential information is indicated in bold type.

Section 2505(a)(1)(C): Length of Time for which Confidential Treatment is Requested

Sunray is requesting that the designated information be kept confidential until 2013, which is two years after the last year of data included in this filing. The filing includes detailed business plans, confidential pictures of plant infrastructure and a generation forecast for each year from the present through 2011, in order to meet the requirements of the Existing Renewable Facilities Program.

The confidential data provided includes future estimates of:

- Yearly generating capacity, both with and without CEC funding;
- Anticipated plant modifications, additions, and related costs from 2009 through 2011;
- Strategies for increasing the company's overall competitiveness during this period (2009 through 2011);
- Specific investment decisions and business plans to increase the facilities' electric production and capacity factors;
- Future purchasing plans;
- Future hiring plans;
- Research and development initiatives; and
- Discussions of other means of improving its facilities.

Sunray requests that this information be granted confidential treatment until 2013. By that time, the information included will have little value to potential competitors. Releasing this information prior to 2013 would harm Sunray by disclosing its future purchasing and business plans. There are a very limited number of thermal solar facilities located in California and only a few companies that manufacture and sell solar equipment of the type used by Sunray. This results in a very competitive market place for qualified staff and equipment. Additionally, release of Sunray's proprietary electric generation estimates would greatly harm the company's ability to compete in the competitive California energy marketplace.

Section 2505(a)(1)(D): Justification for Confidential Treatment

The Public Records Act protects, among other things, "corporate financial records" and "corporate proprietary information including trade secrets," as well as "information . . . furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California."³

³ Section 6254.7 of the Public Records Act.

The data provided by Sunray are trade secrets, corporate financial records, corporate proprietary information, and are also being supplied for the purpose of receiving incentive payments from the CEC in order to improve its California facilities. This information also includes future purchasing considerations, solar field modification plans, the methods by which Sunray intends to increase its generation, the cost of obtaining insurance for the facility, and other proprietary information. Also included in the filing are proprietary photographs detailing the technology used by Sunray and the company's planned plant modifications. The release of Sunray's business and financial information would financially harm the company and put it at a significant commercial disadvantage by giving its competitors access to its fundamental business information.

Trade secrets are not included in the definition of "public records" and are thus exempt from mandatory disclosure under the Public Records Act. Trade secrets:⁴

may include, but are not limited to, any formula, plan, . . . process, procedure, production data, or compilation of information . . . 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.

The information provided by Sunray meets the definition of a trade secret because it includes future period generation forecast data, is a compilation of proprietary information, and discusses the equipment, processes and procedures used by Sunray to produce electricity, which is an article with commercial value. For example, Sunray's response discusses its plans to increase the level of its production through various specific changes in its physical plant and also discusses how it maintains its solar facilities. Providing this information to competitors would reveal Sunray's strategies for increasing the efficiency of its solar generating facilities. This would provide competitors with information about Sunray's processes and strategies that they do not currently possess.

The information provided by Sunray also includes future hiring and purchasing plans. Given the limited number of persons qualified to work for this type of solar facility, as well as the limited number of equipment suppliers, release of Sunray's future business plan would significantly harm the company's ability to compete.

Additionally, there would be little or no public interest benefit from releasing the information for which Sunray has requested confidential treatment.⁵ This information

⁴ Section 6254.7(d) of the Public Records Act.

⁵ Section 6255(a) of the Public Records Act, "The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

would have little interest or value to the members of the public who are not competitors of Sunray. However the harm to Sunray would be considerable if the information were released. Thus, even if the CEC were to find that Sunray's information does not fall under one of the specific exemptions contained in the Public Records Act, it should still exercise its discretion to grant this information confidential status.

Finally, the information for which Sunray is seeking confidential information is not publicly available. Sunray is a privately held company and is not required to make extensive public disclosures to shareholders or other investors. The proprietary information included in this filing has not been shared outside the company, other than to consultants and corporate counsel, all of whom receive this information on a confidential basis, and is disclosed to Sunray's employees only on a need-to-know basis. The information could not be legitimately reproduced by an outside entity.

Section 2505(a)(1)(E): Release of Masked Information

Sunray requests that its information not be released, even if aggregated or masked. The small number of solar thermal generators in California makes it easy for competitors to reverse-engineer any masked or aggregated data. Since there are only a handful of generating facilities using the same or similar technology as Sunray's SEGS I and SEGS II, masking the company's name or other identifying information would do little to protect Sunray's confidential information.

If information is released in aggregated form, Sunray requests that it only be included in data aggregated at a high level of abstraction, such as "total renewable energy production in California."

Section 2505(a)(1)(F): How Information Is Kept Confidential by Sunray

None of the information for which Sunray is requesting confidential treatment has ever been disclosed to persons not employed by Sunray. Sunray is a privately held company and is not required to make extensive public disclosures to shareholders or other investors. This proprietary information has not been shared outside the company, other than to consultants and corporate counsel, all of whom receive this information on a confidential basis, and is disclosed to Sunray's employees only on a need-to-know basis.

Section 2505(a)(1)(G): Certification

A certification by Mr. Eric Wills, President of Sunray, attesting to the accuracy of this information is included below. As the President of Sunray Energy, Inc., Mr. Wills is authorized to act on behalf of the company.

Conclusion

Sunray Energy requests that the CEC accept its request for confidential treatment of portions of its application. The information provided by Sunray includes detailed descriptions of its future business plans and proprietary strategies for operating and increasing the production at its solar generating facilities. This information is exempt from disclosure under the Public Records Act as trade secrets, confidential financial information, and corporate proprietary information.

I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to be best of my knowledge and that I am authorized to make the application and certification on behalf of Sunray.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Wills", written over a horizontal line.

Eric Wills
President
Sunray Energy, Inc.