

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

March 13, 2009

Eric Willis
Sunray Energy, Inc.
P.O. Box 338
Daggett, CA 92327

DOCKET 02-REN-1038
DATE MAR 13 2009
RECD: MAR 13 2009

RE: **Existing Renewable Facilities Application**
Application for Confidentiality
Sunray Energy, Inc.
Docket No. 02-REN-1038

Dear Mr. Willis:

On February 13, 2009, Sunray Energy, Inc. (Sunray) filed an Application for Confidentiality with California Energy Commission (Commission) for information related to the Funding Eligibility Existing Renewable Facilities Program Application (Docket No.02-REN-1038). The application seeks confidentiality for information related to Sunray's future estimates of the following:

1. Yearly generating capacity
2. Anticipated plan modifications, additions and related costs from 2009 through 2011
3. Strategies for increasing the company's overall competitiveness from 2009 through 2011
4. Specific investment decisions and business plans to increase the facilities' electric production and capacity factors
5. Future purchasing plans
6. Future hiring plans
7. Research and development initiatives
8. Discussions of other means of improving facilities

Sunray relies upon Government Code section 6254.15, which exempts from disclosure corporate financial records, corporate proprietary information including trade secrets, and information related to siting within the state, furnished to a government agency by a private company for the purpose of, among other things, expanding a facility within the State of California. Sunray claims that the information submitted to the Commission is information supplied for the purpose of receiving incentive payments in order to improve its facilities, including 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 the company's planned plant modifications.

Sunray further claims that the information is trade secret because:

. . . it includes future period generation forecast data, is a compilation of propriety 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.

A properly filed Application for Confidentiality shall be granted under the 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 [Energy] Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.) The California courts have traditionally used the following definition of trade secret:

a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

Sunray has made a reasonable claim that the law allows the Commission to keep the information submitted by Sunray confidential on the grounds that it is trade secret and furnished for the purpose of expanding Sunray's facilities. As such, your request for confidential determination is granted. The information listed above will remain confidential until December 31, 2013.

Persons may petition to inspect or copy the records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

Please note that subsequently submitted information can be deemed confidential as specified in this letter without the need for a new application if you file a certification under penalty of perjury that the new information is substantially similar to the information granted confidentiality by this determination. California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4).

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If you have any questions concerning this matter, please contact Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,



Melissa Jones
Executive Director

cc: Docket Unit
Jason Orta, Energy Efficiency & Renewables Division