

CALIFORNIA ENERGY COMMISSION

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SACRAMENTO, CA 95814-5512



March 17, 2009

Anne Runnalls
Martifer Renewables Solar Thermal LLC
12555 High Bluff Drive, Suite 100
San Diego CA 92130

DOCKET

08-AFC-12

DATE MAR 17 2009

RECD. MAR 17 2009

RE: **Application for Confidentiality, Emission Reduction Credits
and Megawatt Generation Information
San Joaquin Solar 1 & 2
Docket No. 8-AFC-12**

Dear Ms. Runnalls:

On February 18, 2008, San Joaquin Solar, LLC, and San Joaquin Solar 2, LLC (collectively referred to herein as "Applicant") filed an application for confidentiality in the above-captioned Docket. Applicant seeks confidentiality for the Emission Reduction Information and the Energy Generation Data for the San Joaquin Solar 1&2 Project.

Applicant bases the request upon the Public Records Act, Govt. Code § 6254.7(f), which provides for the confidentiality of data used to calculate the costs of obtaining omissions offsets, and upon section 6254.11, which provides for the confidentiality of records relating to volatile organic compounds information received by an air pollution control officer.. The application states, in part:

The megawatt generation information should be kept confidential indefinitely as specified in the PPA between the applicant and PG&E. The emission offset sources and term sheets should be kept confidential indefinitely due to the confidential nature of the negotiations. Public disclosure of the Applicants (sic) current negotiating to acquire Emission Reduction Credits would impact market cost and availability. . . .The material contains trade secrets and its disclosure would cause a loss of the Applicant's competitive advantage.

A properly filed application for confidentiality shall be granted under the California Code of Regulations, title 20, § 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.)

The Public Records Act allows for data used to calculate the costs of obtaining emissions offsets to be confidential. Gov. Code, § 6254.7(f). However, that same section states that at the time that an air pollution control district issues a permit to construct to an applicant, data obtained from the applicant regarding offsets purchases becomes a public record.

The application makes a reasonable argument under the California Energy Commission's regulations for classifying the data used to calculate the costs of obtaining emissions offsets as a trade secret, providing the applicant with a competitive advantage over potential competitors, in accordance with the above standards. Cal. Code Regs., tit. 20, § 2505. Therefore, it is in the public interest that data used to calculate emissions offsets be given confidentiality, so as not to interfere with offset negotiations.

However, Applicant requests that the information be kept confidential indefinitely, in order to ensure that ongoing negotiations are not hampered. The Public Records Act does not allow for such information to be kept confidential indefinitely, as stated above. Additionally, the term of confidentiality needs to be carefully specified to ensure conformance with the policies of both the Environmental Protection Agency (EPA) and the Energy Commission. The identification and evaluation of offset sources is a critical component of the Energy Commission's licensing process, including our review of environmental impacts as the lead agency pursuant to the California Environmental Quality Act (CEQA).

I therefore grant **temporary confidentiality** to Applicant's data, only until such time as the air district issues a permit to construct.

As to the second portion of your request, that the megawatt generation information should be kept confidential indefinitely as specified in the Power Purchase Agreement between Applicant and PG&E, your request is **denied**. You have not cited to any law which would allow the Commission to keep megawatt generation information confidential, and an agreement between two third parties is not a legally supportable ground for the Commission to grant confidentiality. Furthermore, such information must be public information as part of the Application for Certification and the Commission's and the public's review of that document.

Any subsequent submittals related to data used to calculate offset costs can be deemed confidential for the temporary term specified in this letter without the need for a new application, provided that you file a certification under penalty of perjury that the new information is substantially similar to that which is granted confidential status by this determination. California Code of Regulations, title 20, § 2505, subdivisions (a)(1)(G) and (a)(4).

Anne Runnalls
March 17, 2009
Page 3

Persons may petition to inspect or copy the records that I have designated as confidential. Any appeal of my decision to grant or deny confidentiality must be filed within fourteen days from the date of this decision. The procedures and criteria for appealing any part of this decision are set forth in the California Code of Regulations, title 20, section 2505. 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
Joseph Douglas, Project Manager
Lisa DeCarlo, Project Staff Counsel