

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

April 23, 2009

DOCKET**07-AFC-5**

DATE APR 23 2009

RECD. APR 23 2009

Jeffery Harris
Ellison, Schneider & Harris LLP
2015 H Street
Sacramento, California 95811Re: **Application for Confidentiality, System Impact Study,
Ivanpah Solar Electric Generating System,
Docket No. 07-AFC-5**

Dear Mr. Harris,

On September 29, 2008 Solar Partners LLC filed an application for confidentiality for the Interconnection System Impact Study ("SIS") for the Ivanpah Solar Electric Generating System ("ISEGS"), in Docket No. 07-AFC-5. On October 30, 2008, I denied the application. On November 13, you appealed my denial to the Commission. (Docket No. 07-AFC-5, Letter from J. Harris to M. Jones (Nov. 13, 2008) ("Appeal").)

The Appeal asks for confidentiality for the entire SIS, or alternatively only for Tables 1-2 and 1-3, and Figures 2-1, 2-2, 2-3, and 2-4. (Appeal, p. 4, ¶ 5 & Conclusion.) Even treating the appeal as applicable only to those Tables and Figures, I believe that it is substantially deficient. For example, it quotes an incorrect standard of review (Cal. Code Regs., tit. 20, § 2505, subd. (a)(3)(A)); actually, the standard of review for confidentiality appeals is more strict, setting upon an appellant the burden of proof to demonstrate that confidentiality is warranted under the Public Records Act (see *id.*, § 2508, subd. (b)). In addition, it is unclear whether the provisions of Public Resources Code section 25322, subdivision (a)(1), which you also cite, are applicable to confidentiality determinations made in siting cases.

Furthermore, the Appeal itself is lacking in several key factual and legal areas:

a) The Appeal provides no factual justification for the assertions that:

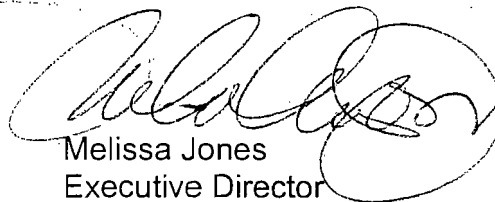
- (i) SIS output is "essentially the same" as the type of "plant production data" covered by the California Public Records Act (see Appeal, p. 2, ¶ 2; Gov. Code, § 6254, subd. (e));
- (ii) SIS information can "be leveraged by market participants" (Appeal, p. 3); and
- (iii) the public benefits of disclosure are "greatly outweighed" by the risks (*id.*, p. 3, ¶ 3).

- b) The Appeal does not explain the legal relevance, if any, of the LGIP to the criteria in the Public Records Act. (See *id.*, pp. 3 - 4.)
- c) The Appeal does not demonstrate that the information in the SIS is not already public information. It is my current understanding that the data contained in the SIS Tables and Figures is publicly available through the Western Electricity Coordinating Council.

Therefore, I believe it is highly likely that the Commission would deny the appeal. However, because neither the original confidentiality application, nor the Appeal, dealt specifically with the Tables and Figures (which you have conceded are the only parts of the SIS for which confidentiality is arguably critical), I will treat the Appeal as a new original application for confidentiality for that material, absent your objection. (See Cal. Code Regs., tit. 20, § 2505, subd. (a)(1).) For the reasons stated in the previous paragraph, the application is missing necessary facts and legal information, and I request that you provide the information required to remedy the application's deficiencies. (See *id.*, § 2505, subd. (a)(3)(A). Pursuant to Commission regulations, you have 14 days from the date you receive this request to provide the missing information.

The Commission will keep the entire SIS confidential for 14 days from the date of this letter, and it will keep the Tables and Figures described above confidential for 14 days after I have ruled on the amended application (or for whatever period is appropriate, if I grant the application).

Sincerely,



Melissa Jones
Executive Director

cc: Docket No. 07-AFC-5
John Kessler