



REDELL ENGINEERING, INC.

COMPLETED

September 24, 2009



Melissa Jones
Executive Director
California Energy Commission
1516 Ninth Street, MS 15
Sacramento, CA 95814

DOCKET

09-AFC-5

DATE	SEP 24 2009
RECD	SEP 25 2009

Re: 09-AFC-5 Mojave Solar project Application for Certification, Data Adequacy Supplement, Confidential Designation – Attachment G: Part 2 (confidential), Part 3 (confidential), and Part 4 (confidential)

Dear Ms. Jones:

Mojave Solar LLC (“Applicant”) is the owner of the proposed Mojave Solar Project located in unincorporated San Bernardino County, California (the “Project”). In support of the Application for Certification Data Adequacy Supplement for the Project and on behalf of the Applicant the attached documents entitled “Attachment G Part 2: 9,380 AFY Water Rights (Confidential),” “Attachment G Part 3: 224 AFY Water Rights (Confidential),” and “Attachment G Part 4: 874 AFY Water Rights (Confidential),” are requested to be designated and handled as confidential pursuant to CCR Title 20 Section 2505.

In support of this application for confidential designation, the following information is provided:

Title and description (including number of pages) of the record requiring confidential designation:

Attachment G: Part 2 (confidential), Attachment G: Part 3 (confidential), and Attachment G: Part 4 (confidential). Dated September 2009. Pages: 63 (including cover pages)

“specifically indicate those parts of the record that should be kept confidential”

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Applicant requests confidential designation for the entire confidentially marked Attachment G: Part 2, Part 3, and Part 4.

“state the length of time the record should be kept confidential, and justification for the length of time”

This information should be held confidential indefinitely in order to protect the information provided herein as described below.

“cite and discuss the provisions of the Public Records Act or other law that allow the Commission to keep the record confidential. If the applicant believes that the record should not be disclosed because it contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, the application shall also state the specific nature of that 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”

The Public Records Act provides that an agency “shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of [the Public Records Act] 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.” Gov. Code § 6255. The Public Records Act expressly exempts corporate financial records and corporate proprietary information. Gov. Code § 6254.15. The information contained in these contracts includes corporate financial information and the agreements themselves are corporate proprietary information. The agreements contain terms and conditions and specific information relating to the corporation’s real property that is valuable economic information. Competitors could gain economic value by knowing the terms and conditions in these agreements, particularly the release, indemnity, representations and warranties, conditions to closing, and repurchase provisions. The terms negotiated in these contracts are of value to the applicant because they involve and describe the corporation’s investment. This information could be valuable to competitors because it regards the value of the surrounding land, the corporation’s negotiating history, and the terms of the potential repurchase of water rights if the proposed Project is not approved.

In addition, the agreements have confidentiality clauses that were negotiated along with the other terms of the agreements to assure both parties that the terms would not be disclosed without their consent. Not only would it be burdensome for the Applicant to obtain permission from the parties to the agreements, but in addition, the Applicant does not wish to disclose the terms of the agreements to protect their interests as stated above. The public interest in protecting private contracts and

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negotiating history is best served by keeping these agreements confidential. Since these land purchase agreements have already been executed and the deeds recorded, there can be no real public need for the information contained in their terms and conditions. Therefore, the public interest served by not disclosing these records clearly outweighs any public interest in disclosure.

“state whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required. If the information cannot be disclosed even if aggregated or masked, the application shall justify why it cannot”

The Applicant considered whether it would be possible to aggregate or mask the information. However, the confidentiality clauses extend to all terms and no feasible method of aggregating or masking the information could be identified that would not either disclose the information or render the information provided useless.

The attached confidential information is kept separately from other documents and only provided to the Applicant's employees, consultants and counsel that have non-disclosure agreements and only on a need to know basis and kept separately from general documents.

Redell Engineering, Inc. has been authorized to make this application and certification on behalf of Applicant. With my signature to this letter, 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.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frederick Redell', written in a cursive style.

Frederick Redell, PE