

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

October 25 , 2009

DOCKET**09-AFC-5**DATE OCT 25 2009RECD. NOV 03 2009Frederick Redell
Redell Engineering, Inc.
1820 E. Garry Ave., Ste. 116
Santa Ana, CA 92705**RE: Application for Confidentiality, Water Rights
Mojave Solar Project
Docket No. 09-AFC-5**

Dear Mr. Redell:

On September 25, 2009, you submitted an Application for Confidentiality on behalf of the Mojave Solar Project ("Applicant") (Docket No. 09-AFC-5). The application seeks confidential designation for portions of the Data Adequacy supplement for the Applicant's Application for Certification. Specifically, the application seeks confidential designation for the following documents:

Attachment G Part 2: 9,380 AFY Water rights
Attachment G Part 3: 224 AFY Water Rights
Attachment G Part 4: 874 AFY Water Rights

The application state that the documents are contracts that include corporate financial information, specifically:

. . . 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. . . 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.

Applicant claims that the information is proprietary information, and cites to California Government Code section 6254.15 (the Public Records Act) in support of the claim that the information should be confidential. That section exempts from disclosure corporate financial records and corporate proprietary information, including trade secrets.

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.)

California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation 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 state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to the applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Applicant has made a reasonable claim that the law allows the Commission to keep the above listed information confidential on the grounds that it is proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage. As such, your request for confidential determination is granted. The information listed above will remain confidential until December 31, 2011.

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,

A handwritten signature in black ink, appearing to read "Melissa Jones", written in a cursive style.

Melissa Jones
Executive Director

cc: Docket Unit
Craig Hoffman, Energy Commission Project Manager