

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

January 3, 2012

DOCKET	
11-AFC-4	
DATE	JAN 03 2012
RECD.	JAN 03 2012

Gary Rubenstein
Sierra Research
1801 J Street
Sacramento, CA 95816

RE: **Rio Mesa Solar Electric Generating Facility Application for Confidential Designation: Air Quality**
Docket No. 11-AFC-4

Dear Mr. Rubenstein:

On December 14, 2011, the California Energy Commission ("Energy Commission") received an Application for Confidentiality ("Application") submitted on behalf of Rio Mesa Solar I, II and III, LLC, by Sierra Research ("Applicant"). The Application seeks confidential designation for the following aspects of a report related to air quality data:

- 1) Equations, formulas and calculations contained in the Microsoft Excel spreadsheet used to produce air quality data.

The Application notes that confidentiality is sought for the proprietary equations formulas and calculations used to produce the air quality data and analysis and not for the results of the calculations and equations. The Application identifies the equations, formulas and calculations as trade secrets which provide the Applicant with economic value and which were derived at substantial time and resources. The Applicant has never released the proprietary information publically.

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.

Because the Application relates to Air Quality data two additional sections of the Government Code are particularly relevant to this Application.

Government Code 6254.7(a) states, "All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution...which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide...are public records."

Government Code 6254.7(e) states, "Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade secrets as defined in subdivision (d), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data which constitute trade secrets and which are used to calculate emission data are not public records."

The Application is clear that confidentiality is being sought for proprietary equations, formulas and calculations and not the nature, extent, quantity or degree of air contaminants. Therefore the Applicant has made a reasonable claim that the law allows the Energy Commission to keep the equations, formulas and calculations contained in the above listed report confidential on the grounds that they are trade secrets and/or proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage.

Applicant requests that the information be kept confidential indefinitely. While requests for indefinite grants of confidentiality are disfavored and closely reviewed, additional information provided to staff supports such a request. The proprietary equations, formulas and calculations have use beyond the Rio Mesa project and have wide application. It is anticipated the proprietary information will continue to have value as long as air emission data is required to be produced by regulators. Further, public release of the proprietary information will impact the Applicant's competitive advantage across a wide range of projects. The Applicant does not believe the proprietary information can be aggregated to a level that would allow disclosure.

For the above reasons, your request for confidential designation for the equations, formulas and calculations contained in the Microsoft Excel spreadsheet is granted. The information/data will remain confidential indefinitely.

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Authorized Air Quality staff provided access to the Excel spreadsheet will be informed as to the scope of the confidentiality and be reminded of their responsibility and duty to keep the protected information confidential.

Be advised that persons may petition to inspect or copy 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. If you have any questions concerning this matter, please contact Jared Babula, Staff Counsel, at (916) 651-1462.

Sincerely,

/s/

Robert P. Oglesby
Executive Director

cc: Docket Unit
Pierre Martinez, Energy Commission Project Manager
Matthew Layton, Air Quality