

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512**DOCKET****11-AFC-04**DATE MAR 29 2012RECD. MAR 29 2012

March 29, 2012

Brian S. Biering
Ellison, Schneider & Harris LLP
2600 Capitol Ave, Suite 400
Sacramento, CA 95816

**RE: Rio Mesa Solar Electric Generating Facility Application for
Confidential Designation: Portions of the Power Purchase
Agreement.
Docket No. 11-AFC-4**

Dear Mr. Biering:

On March 16, 2012, the Energy Commission received an Application for Confidentiality submitted on behalf of Rio Mesa Solar I, II and III, LLC, ("Applicant"). The Application seeks confidential designation for the portions of the Power Purchase Agreement submitted in response to Staff Data Requests 25 and 27.

The Application notes that confidentiality is sought for the proprietary and trade secret information which provides a competitive advantage to the Applicant. The Applicant has never released the proprietary information publically.

Because Power Purchase Agreements with Investor Owned Utilities are approved by the California Public Utilities Commission in a public process, it is my understanding that Commission Staff requested clarification as to whether the information subject to this application would become public through the Public Utilities approval process of the Power Purchase Agreement. The additional information provided to staff stated that the material subject to this application was submitted to the Public Utilities Commission as part of a confidential appendix to the advice letter filings. Therefore it appears the materials will be confidential at the Public Utilities Commission.

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.

The Applicant has made a reasonable claim that the law allows the Commission to keep the relevant portions of the Power Purchase Agreement 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 originally requested that the information be kept confidential indefinitely. Requests for indefinite grants of confidentiality are disfavored and closely reviewed. It is my understanding that after discussions with staff the Applicant is amendable to a term of confidentiality for the life of the Power Purchase Agreement which is 20 years.

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 portions of the Power Purchase Agreement submitted in response to Staff Data Requests 25 and 27 is granted. The information/data will remain confidential for the life of the Power Purchase Agreement which is 20 years.

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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,

A handwritten signature in black ink, appearing to read 'R. Oglesby', with a long horizontal flourish extending to the right.

Robert P. Oglesby
Executive Director

cc: Docket Unit
Pierre Martinez, Commission Project Manager