

CALIFORNIA ENERGY COMMISSION

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California Energy Commission

DOCKETED**11-AFC-04**

TN # 69312

JAN 28 2013

January 28, 2013

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

**RE: Application for Confidentiality Queue Cluster 3 & 4 Phase II Individual
Project Report Rio Mesa Solar
Docket No. 11-AFC-04**

Dear Mr. Biering:

On December 13, 2012, Rio Mesa Solar, LLC, (“Applicant”) filed an application for confidentiality to the above-captioned docket. The application seeks confidentiality for the California Independent System Operator Queue Cluster 3 & 4 Phase II Report for the Rio Mesa Solar facility. The application notes that only the individual project report is the subject of the application. The group report, which identifies the impacts of all projects in the queue is not confidential and was docketed separately.

The application states that the Individual Phase II Report contains confidential trade secrets and commercially sensitive data relating to the specific technologies employed as well as commercially valuable cost information.

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.)

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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.

In this case the technology and transmission planning cost information provides the Applicant with a business advantage which if known by others could impact the Applicant's ability to fairly negotiate future contracts and power purchase agreements.

Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the Individual Project Report confidential on the grounds that it contains 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 harming Applicant's business.

For the above reasons, your request for confidential designation of the Individual Phase II Report is granted. The data will remain confidential until the facility ends commercial operations. In the event the facility is not built, the report will be confidential for five years from the application date of December 13, 2012.

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,



Robert P. Oglesby
Executive Director

cc: Docket Unit
Pierre Martinez Energy Commission Project Manager