

CALIFORNIA ENERGY COMMISSION

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California Energy Commission

DOCKETED**14-PIR-01****TN 73067****MAY 30 2014**

May 30, 2014

Mr. James Hoffman
Sun Synchrony
527 La Jolla Street
Vallejo, CA 94591

RE: **Application for Designation of Confidential Records,
Sun Synchrony Demo Prototype CD
Docket Number CEC-PIR-12-019**

Dear Mr. Hoffman:

The Energy Commission is in receipt of an application for confidentiality filed by Sun Synchrony ("Applicant"). The application requests confidential designation for the Demo Prototype Specifications CD which contains technical data about Sun Synchrony's advanced photo-voltaic module. The CD of prototype information is due under the grant CEC-PIR-12-019.

The application states that the prototype CD is confidential because it contains a collection of technical information, specifications, drawings, models, instructions, methods, performance data, and product descriptions and development plans relating Synchrony's advanced concentrating PV module. Such information constitutes innovative trade secrets developed by Sun Synchrony at great expense. Release of such information would cause loss of competitive advantage in the highly competitive photo-voltaic market.

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 Demo Prototype Specifications CD contains technical information regarding the Applicant's advanced PV module which offers distinct features not found on competitive products. Given the highly competitive solar PV module market, the advanced features of Applicant's module has considerable economic value for Applicant which could be lost if competitors had the data. Applicant invested significant time and money in developing the technology disclosed on the CD.

Maintenance of confidentiality is necessary to allow the Applicant to develop and prosecute patent applications covering trade secrets contained in the Confidential Record, where disclosure of such trade secrets prior to the filing of such patent applications would tend to invalidate any patents.

Possession of the material by a competitor could enable it to replicate the module and undermine Applicant's ability to successfully commercialize the technology. It is unlikely that the material could be legitimately acquired by others given its novelty.

Applicant has made a reasonable claim that the law allows the Energy Commission to keep the demonstration prototype CD confidential on the grounds that it is trade secret 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. If competitors obtained the PV module information the Applicant's competitive advantage would be lost.

Applicant requests that the information be kept confidential for 5 years. In addition, the Applicant does not believe the technology information can be aggregated to a level that would allow disclosure.

For the above reasons, your request for confidential designation for the information on the Demonstration Prototype CD is granted. The information/data relating to technology will remain confidential for 5 years from the date of this letter.

James Hoffman
May 30, 2014
Page 3

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
Zhiqin Zhang
Crystal Presley-Willis