

DOCKETED	
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Project Title:	Potentia-Viridi Battery Energy Storage System
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August 13, 2025

Via Email

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**Application for Confidential Designation: Potentia-Viridi Battery Storage Energy
Storage System Project
Docket No. 24-OPT-04**

Dear Mr. Leitch and Ms. Strain:

The California Energy Commission (CEC) has received an Application for Confidentiality from Levy Alameda, LLC (Applicant), docketed May 30, 2025, (TN 263795) covering the following records:

- Confidential, UL9540A Reports, May 2025, Battery energy storage system fire test reports.

A properly filed application for confidentiality shall be granted under 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 Commission to keep the record confidential.”

Discussion

The application states that UL9540A Reports should be designated confidential to preserve confidentiality of the Applicant's trade secrets and commercially sensitive information related to the manufacturer's battery energy storage system and equipment. Additionally, the Applicant is seeking confidentiality to prevent loss of competitive advantage to the Applicant from disclosure of its trade secrets and commercially sensitive information. The applicant also claims the reports should be designated confidential to protect energy infrastructure from vandalism, terrorism, or other bad acts. The application states the documents should be granted confidentiality under the California Public Records Act, referencing Government Code sections 7927.605(a), 7927.705, Evidence Code section 1060, and Civil Code section 3426.1(d). The application also states that the public interest served by not disclosing this information clearly outweighs the public interest served by disclosure. (Gov. Code, § 7922.000.)

To support this position, the application claims that it is in the public's interest to have nondisclosure of this information to ensure industry competitiveness and maintain trade secrets. According to the Applicant, disclosure of this information would create a significant market disadvantage for the Applicant, compromise the Applicant's position during contract negotiations, and provide competitors an advantage. Finally, the Applicant

states that the UL9540A Reports contain information related to the vulnerability of energy infrastructure, which is at risk for vandalism, terrorism, or other bad acts. It is in the public's interest to keep this information confidential to protect public safety and security. The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705, 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

Civil Code section 3426.1(d) defines "trade secret" as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. (Civ. Code, § 3426.1(d); See also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

California Code of Regulations, title 20, section 2505 (a)(1)(D), provides that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, 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 application addresses the four elements in California Code of Regulations, title 20, section 2505 (a)(1)(D) as follows:

- 1) *The specific nature of the advantage* – Trade secrets and commercially sensitive information of one or more battery energy storage system equipment manufacturers. With respect to battery manufacturers, the UL9540A reports are trade secrets because they contain confidential test results with proprietary information about the manufacture and performance of their respective battery products. This information is not known by competitors and cannot be readily ascertained or reverse engineered. Additionally, the reports contain the identities of the battery products that the Applicant is considering for the project. Battery manufacturers do not know the identities of the products that the Applicant is considering. The existence, status, and substance of contract negotiations is a trade secret under Civil Code, section 3426.1(d). (*Competitive Technologies v. Fujitsu Ltd.*, 286 F. Supp. 2d 1118, 1147 (2003).)
- 2) *How the advantage would be lost* – The UL9540A Reports contain trade secrets of the Applicant and battery manufacturers. Disclosing the information in the document would reveal to the public and the Applicant's potential commercial partners and industry competitors which equipment the Applicant may use for its project as well as proprietary information about such equipment. The Applicant has

a competitive advantage in that this information is not known and cannot be legitimately acquired by other parties, including counterparties with whom it is negotiating and industry competitors. Disclosure of such information would put the Applicant at a significant market disadvantage, compromise the Applicant's position during contract negotiations, and provide an advantage to industry competitors and potential commercial partners. Disclosure of such information also could put the Applicant at risk of violating its obligations under non-disclosure/confidentiality agreements with the equipment manufacturer(s) who provided such information to the Applicant.

- 3) *The value of the information to the applicant* – Engineering information has independent economic value from not being generally known to the public or applicant's competitors who can obtain economic value from its disclosure. In addition, revealing the names of the battery products that the Applicant is considering will provide a competitive advantage to other battery manufacturers with whom the Applicant may negotiate.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information could not be legitimately acquired or duplicated by others. This information has been kept confidential by the Applicant and has not been disclosed to a person other than an employee, attorney, or consultant working on behalf of the Applicant under confidentiality agreements or duties of confidentiality. The Applicant states that other battery manufacturers take efforts to maintain secrecy of the reports by requiring buyers to sign confidentiality or nondisclosure agreements. The Applicant is obligated to keep this information confidential pursuant to non-disclosure/confidentiality agreements with the battery energy storage system manufacturers who provided this information to the Applicant.

Executive Director's Determination

The applicant has made a reasonable claim that UL9540A Reports can be maintained as confidential for the life of the facility. As such, the Applicant's request for confidential designation is granted.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

Patrick Leitch
Kelene Strain
August 13, 2025
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If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to be 'Drew Bohan', with a stylized, flowing script.

Drew Bohan
Executive Director