

**DOCKETED**

<b>Docket Number:</b>	01-AFC-07C
<b>Project Title:</b>	01-AFC-7C Russell City Energy Company
<b>TN #:</b>	240713
<b>Document Title:</b>	Application for Confidential Designation
<b>Description:</b>	N/A
<b>Filer:</b>	Eric Janssen
<b>Organization:</b>	Ellison Schneider Harris & Donlan LLP
<b>Submitter Role:</b>	Applicant Representative
<b>Submission Date:</b>	11/23/2021 2:56:28 PM
<b>Docketed Date:</b>	11/23/2021



November 23, 2021

Drew Bohan  
Executive Director  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

**Re: Russell City Energy Center (01-AFC-07C): Application for Confidential Designation**

Dear Mr. Bohan:

Pursuant to Sections 2501 et seq., of Title 20 of the California Code of Regulations, the Russell City Energy Company, LLC hereby submits this Application for Confidential Designation for the *Investigation Report: Calpine Russell City Steam Turbine/Generator Event* for the Russell City Energy Center.

Please feel free to contact me at 916-447-2166 or [sgn@eslawfirm.com](mailto:sgn@eslawfirm.com) should you have any questions or require additional information. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Samantha G. Neumyer".

Samantha G. Neumyer  
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Sacramento, CA 95816  
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*Attorneys for Russell City Energy Company, LLC*

Cc: Linda Barrera, CEC Chief Counsel

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1. *Specifically indicate those parts of the record which should be kept confidential.*
  - a. *Title, date, and description (including number of pages) of the information or data for which you request confidential designation.*

Russell City Energy Company, LLC (“Applicant”) seeks confidential designation for the following document prepared on behalf of the Russell City Energy Center (“RCEC”):

<b>Title</b>	<b>Date</b>	<b>Description</b>	<b># of Pages</b>
<i>Investigation Report: Calpine Russell City Steam Turbine/Generator Event (“Investigation Report”)</i>	Nov. 16, 2021	The <i>Investigation Report</i> contains a root cause analysis of the steam turbine event that occurred at the RCEC on May 27, 2021.	40

- b. *Parts of the information or data for which you request confidential designation.*

The *Investigation Report* should be kept confidential in its entirety.

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

The documents should be kept confidential for the operating life of the RCEC.

3. *Cite and discuss:*

- (a) *the provisions of the Public Records Act or other law that allow the Commission to keep the information or data confidential, and explain why the provision applies to the material; and*
- (b) *the public interest in nondisclosure of the material submitted for confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.*

First, the Public Records Act broadly exempts corporate proprietary information, including trade secrets from public disclosure. (Gov’t Code §§ 6254.7(d), 6254.15.) Trade secrets include “any formula, plan, ... production data, or compilation of information ..., which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service ... and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.” (Gov’t Code §§ 6254.7(d), 6254.15.) The *Investigation Report* relates to the specific technologies and generating processes employed at the Russell City Energy Center, including the design and location of certain facility components and other commercially valuable information related to the facility’s operations and potential improvements, which is known only to the Applicant and used for asset operations and protection purposes. The information has independent economic value from not being generally

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known to the public or to the Applicant's competitors.

In addition to concerns regarding the value of this information to competitors, the Applicant purchases equipment and retains the services of consultants and contractors to conduct work at the RCEC, including work associated with the steam turbine event. Public disclosure of the information in the *Investigation Report* could place the Applicant at a pricing disadvantage if such information is public and available to potential vendors of equipment and providers of services. Thus, the *Investigation Report* has independent economic value from not being generally known to the public, including Applicant's competitors and vendors, that could obtain economic value from the disclosure or use of the information within the *Investigation Report*.

Second, the Public Records Act provides a specific exclusion from disclosure where "...on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov't Code § 6255(a).) The public interest served by not disclosing the *Investigation Report* clearly outweighs the public interest served by disclosure as nondisclosure of the documents will protect against potential misuse of the information for illicit purposes, such as vandalism, tampering, or other third-party imposed damages. Attacks on energy infrastructure are a real, contemporary threat, and the public interest in preventing such acts through limiting use of sensitive information relating to the RCEC clearly outweighs the public interest served by disclosure of the information for which the Applicant is seeking confidential designation.

Third, the Public Records Act protects from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law." (Gov't Code § 6254(k).) California Government Code Section 6254 (ab), in pertinent part, excludes from disclosure, "Critical infrastructure information ["CII"], as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the Office of Emergency Services for use by that office, including the identity of the person who or entity that voluntarily submitted the information.\* \* \* \* \* Both the Department of Homeland Security ("DHS") and the Federal Energy Regulatory Commission ("FERC") have processes for this exemption. Similarly, FERC protects Critical Energy Infrastructure Information ("CEII") through an application for protection from FOIA disclosure. The *Investigation Report* includes information that could be defined as CEII by FERC. CEII includes "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure" that:

- Relates details about the production, generation, transportation, transmission, or distribution of energy;
- Could be useful to a person in planning an attack on critical infrastructure;
- Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and
- Does not simply give the general location of the critical infrastructure. (18 C.F.R. § 388.113(c)(2)).

The *Investigation Report* does not simply give the general location of the critical infrastructure. The *Investigation Report* contains details about the production and generation of energy and could be useful to a person planning an attack on critical infrastructure through the provision of

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engineering and potential vulnerability information about existing critical infrastructure. Information designated by FERC as CEII is exempt from mandatory disclosure under the federal Freedom of Information Act (“FOIA”), and “shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision, or tribal law requiring public disclosure of information or records.” (18 C.F.R. § 388.113(c)(1)).

Similarly, the *Investigation Report* contains information meeting the definition of “critical infrastructure information.” Title 6, section 131 of the U.S. Code defines “critical infrastructure information” as “information not customarily in the public domain and related to the security of critical infrastructure or protected systems,” such as information relating to the “ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation,” including security testing, risk evaluation, risk management planning, or risk audit, or information relating to “any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.” Section 131 also defines the term “protected systems” to include “any service, physical or computer-based system, process, or procure that directly or indirectly affects the viability of a facility of critical structure.” The *Investigation Report* contains information not customarily in the public domain and is related to the security of critical infrastructure or protected systems.

4. *State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

The Applicant considered whether it would be possible to aggregate or mask the *Investigation Report*. However, the *Investigation Report* does not consist of the types of data or programmatic reporting that generally lends itself to the types of masking and aggregation the Applicant believes is contemplated by Section 2505(a)(E), thus making aggregation or masking infeasible in this circumstance. While it may be possible to redact significant portions of the *Investigation Report*, Applicant believes that to do so would result in the record consisting of little more than a cover page and general information regarding the RCEC. However, where the CEC determines that the record can be redacted for public disclosure, the Applicant requests that the CEC consult with the Applicant to make this determination and considering potential production of substantially similar information.

5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

The *Investigation Report* is accessible only to employees or consultants providing essential services to the Russell City Energy Center. The documents have been disclosed to certain regulatory agencies, such as the California Public Utilities Commission and CEC, that have regulatory oversight over either the information or the Russell City Energy Center.

*I certify under penalty of perjury that the information contained in this Application for Confidential Designation is true, correct, and complete to the best of my knowledge and belief. I*

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*am authorized to make this Application and Certification on behalf of the Applicants.*

Dated: November 23, 2021

By: 

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*Attorneys for Russell City Energy Company, LLC*