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| Docket Number: | 21-AFC-01 |
| Project Title: | Pecho Energy Storage Center |
| TN #: | 240783 |
| Document Title: | Application for Confidential Designation for AFC Appendix 3A, Phase I Interconnection Study Documents |
| Description: | N/A |
| Filer: | Amanda Cooley |
| Organization: | Ellison Schneider Harris & Donlan LLP |
| Submitter Role: | Applicant Representative |
| Submission Date: | 12/2/2021 5:03:29 PM |
| Docketed Date: | 12/2/2021 |



December 2, 2021

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

RE: **Pecho Energy Storage Center (21-AFC-01): Application for Confidential Designation for AFC Appendix 3A, Phase I Interconnection Study Documents**

Dear Mr. Bohan:

Pursuant to Sections 2501 et seq., of Title 20 of the California Code of Regulations, Pecho LD Energy Storage, LLC (the "Applicant") hereby submits this *Application for Confidential Designation* for Appendix 3A, Interconnection Study Documents, of the Application for Certification of the Pecho Energy Storage Center.

Please contact us at 916-447-2166 should you have any questions or require additional information. Thank you.

Sincerely,

/s/

Samantha G. Neumyer
Jeffery D. Harris
Ellison Schneider Harris & Donlan LLP

Attorneys for Applicant

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.

Pecho LD Energy Storage, LLC (“Applicant”) seeks confidential designation for the following:

| Title | Date | Description | # of Pages |
|--|-------------|--|-------------------|
| Appendix 3A, Phase I Interconnection Documents | March 2020 | Appendix 3A contains the interconnection documents associated with the Pecho Energy Storage Center (“Project”), including the California Independent System Operator (“CAISO”) Phase I Interconnection Study Report. | 570 |

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

The CEII and trade secret information contained within Appendix 3A 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 facility.

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.

(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.

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).) 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).)

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The public interest served by not disclosing the materials identified above in Section (1) clearly outweighs the public interest served by disclosure. The materials included in Section (1) include information defined by the CAISO as critical energy infrastructure information (“CEII”). CEII is defined by the CAISO Tariff as having the same meaning as that set forth in Section 388.113, et seq. of Title 18 of the Code of Federal Regulations. Section 388.113 defines CEII as including “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)).

Appendix 3A contains sensitive information regarding the production, generation, and transmission of energy that could be useful to a person planning an attack on critical infrastructure. Information designated by FERC as CEII under Section 388.113 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)). The CEC should similarly keep such information confidential as nondisclosure of the information will protect against potential misuse of the information for illicit purposes, such as vandalism, tampering, or other third-party imposed damages. The public interest in preventing such acts clearly outweighs the public interest served by disclosure of the information for which the Applicant is seeking confidential designation.

Appendix 3A also contains trade secrets related to the specific technologies employed and the commercially valuable information related to Applicant’s interconnection queue. The Public Records Act exempts “trade secrets” from public disclosure, including “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.” (Govt. Code § 6254.7(d).) Appendix 3A is a non-public document that includes commercially sensitive, transmission planning and cost information that fall within the definitions of “trade secret”. For example, Appendix 3A contains information that has independent economic value from not being generally known to the public or to the Applicant’s competitors who can obtain economic value from its disclosure or use. Disclosure may cause a loss of competitive advantage to the Applicant, as competitors could ascertain transmission planning and cost information that may affect bids in competitive solicitations

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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 portions of Appendix 3A, and it may be possible to aggregate or redact certain portions. However, the Applicant requests that the CEC consult with both the CAISO and the Applicant to make this determination based on the potential production of materials subject to the Application to ensure that important CEII or trade secret information is not disclosed.

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.*

Appendix 3A is accessible only to employees or consultants providing essential services to the Project, and has been disclosed to certain entities such as the CAISO and CEC that have responsibilities relating to transmission planning or the Project. Appendix 3A was inadvertently docketed as part of the Application for Certification for the Pecho Energy Storage Center. Notwithstanding this error, Appendix 3A should be designated as confidential going forward to limit access to the information contained therein.

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

Dated: December 2, 2021

By:

/s/

Samantha G. Neumyer
Jeffery D. Harris
Ellison Schneider Harris & Donlan LLP

Attorneys for Applicant