

**DOCKETED**

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<b>Project Title:</b>	Pecho Energy Storage Center
<b>TN #:</b>	241000
<b>Document Title:</b>	Response Letter to Ellison Schneider Harris & Donlan Application for Confidential Designation
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December 20, 2021

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**APPLICATION FOR CONFIDENTIAL DESIGNATION:  
Appendix 3A, Phase I Interconnection Study Documents  
Pecho Energy Storage Facility, Docket No. 21-AFC-01**

Dear Samantha Neumyer:

The California Energy Commission (CEC) has received Pecho LD Energy Storage, LLC's (applicant) application for confidential designation, dated December 2, 2021, covering the following Appendix 3A Phase I Interconnection Study Documents:

- 1. Interconnection Request and Generator Interconnection Study Agreement*
- 2. Allocation of Network Upgrade Cost Estimates*
- 3. Transient Stability Plots*
- 4. Substation and Transmission Line Work Scope*
- 5. Preliminary Protection Requirements*
- 6. Generator Dynamic Data*
- 7. Appendix A Q1739 Cluster 13 Phase I Study Final Report, February 12, 2021*
- 8. Addendum to Phase I Study Final Report, March 1, 2021*

The application states that the study documents should be kept confidential for the operating life of the facility and that any aggregation should be in consultation with the California Independent System Operator (CAISO), prior to public release. Two primary reasons are identified for confidentiality, trade secrets and critical energy infrastructure information.

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." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code sections 6254(k); Evid. Code section 1060.) In addition, the California Public Records Act allows for the non-disclosure of corporate

financial records, corporate proprietary information, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California. (Gov. Code section 6254.15.)

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. Howie* (1971) 19 Cal. App. 3d 194, 207, citing the Restatement of Torts, vol. 4, section 757, comment b, p.5.)

California Code of Regulations, title 20, section 2505(a)(1)(D) states that if an 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, an application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to an applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application states the study documents contain trade secrets related to the specific technologies employed and commercially valuable information related to interconnection queue. The application also states the study documents include commercially sensitive, transmission planning and cost information that fall within the definitions of trade secret and have 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. Finally, the application notes that 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 and that the applicant has only shared the study documents with employees and consultants.

The study documents include data provided to and reports generated by CAISO. CEC staff contacted CAISO to confirm how CAISO characterizes the study documents under its public access requirements. CAISO legal staff indicated that under its large generator interconnection agreement for interconnection requests, CAISO maintains as confidential all commercially sensitive information relating to a submitter's technology, research and development, business affairs, and pricing contained in the study documents, for the term of the interconnection agreement.

Based on the above, the applicant has made a reasonable claim that the law authorizes the CEC to keep the study documents confidential as trade secrets and business proprietary information consistent with the CAISO's designation.

The application also states that the study documents contain Critical Energy Infrastructure Information (CEII). Government Code section 6254(ab) sets forth protection from public disclosure of certain infrastructure information provided the following are met: (1) the information is critical infrastructure, as defined in United States Code (U.S.C.), title 6, section 131(3), and (2) the information is voluntarily submitted to the Office of Emergency Services. Importantly, section 6254(ab) expressly states that, this subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

The Department of Homeland Security and the Federal Energy Regulatory Commission (FERC) have processes in place to designate information as protected CEII, but the same limitations found in Govt. Code section 6254(ab) apply, the information must be voluntarily submitted to the federal agency for designation and the designation does not cover data independently obtained by a state agency. The salient provision of federal law states in part, "nothing in this section shall be construed to limit or otherwise affect the ability of a State...agency... to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law." (See 6 U.S.C. section 673 and 18 CFR section 388.113)

The application does not indicate any of the information contained in the study documents have been submitted to the Office of Emergency Services or designation by the Department of Homeland Security or FERC as CEII. In response to staff's inquiry, CAISO legal staff indicated that while they do maintain the study documents as confidential as discussed above, CEII is not the basis for the confidentiality.

The applicant has not made a reasonable claim that the study documents can be withheld as CEII since the study documents have not been provided to the relevant federal agencies for designation and the records in the possession of the CEC were not obtained from the Department of Homeland Security or FERC.

#### Executive Director's Determination

For these reasons, the request for confidential designation for the study documents is granted for the life of the interconnection agreement.

Be advised that under California Code of Regulations, title 20, section 2506, one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy records is issued by the CEC's Chief Counsel.

Under Title 20, California Code of Regulations, section 2507, 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 for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set forth in California Code of Regulations, title 20, sections 2506-2507.

You may seek a confidential designation for information that is substantially similar for which an application for confidential designation was granted by the executive director by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have any questions concerning this matter, please contact Jared Babula, senior attorney, at [jared.babula@energy.ca.gov](mailto:jared.babula@energy.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to be 'Drew Bohan', written in a cursive style.

Drew Bohan  
Executive Director