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VIA EMAIL

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APPLICATION FOR CONFIDENTIAL DESIGNATION:
Russell City Energy Center Compliance Documents (01-AFC-07C)

Dear Samantha Neumyer:

The California Energy Commission (CEC) has received Russell City Energy Company, LLC's (applicant) application for confidential designation, dated October 11, 2021. The application covers the following records related to the Russell City Energy Center (Russell City):

1. Pandemic Guidance Document Power Plant Operating Teams
2. Chemical Handling and Unloading: RCEC
3. Spill Prevention Control and Countermeasure Plan
4. CalARP Risk Management Plan
5. Russell City Energy Center Emergency Action Plan
6. Job Safety Analysis (including permits and job safety analyses)
7. Hot work permit (including permits)
8. Confined space permit procedure (including permits)
9. Lockout/Tagout Procedure (Control of Hazardous Energy Standard) (including permits)
10. Personal Protective Equipment Standard
11. Complaints, notices of violation, and citations from 2018 to 2021 for Russell City
12. Fire Protection System Vol. 1 containing inspection, testing, and maintenance reports for Russell City's fire protection system
13. Fire Protection System Vol. 2 containing detailed schematics of Russell City's fire protection system
14. Photos of ammonia storage, bulk chemical storage, fire pumps, transformers, hazardous waste, and worker safety at Russell City

The application states that the records should be kept confidential for the operating life of the Russell City facility and that the aggregation of the

information may be possible in discussion with the applicant. The applicant asserts the following bases for confidential designation: (1) Government Code section 6254(k), and (2) Government Code section 6255, known as the "balancing test." The applicant also states that the information includes potential trade secret and confidential business information and contains information similar to critical energy infrastructure information (CEII) but does not specify any specific exemption relevant to these claims.

An application for confidential designation 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 Commission to keep the record confidential." The executive director determination made in response to an application for confidential designation is subject to a reasonableness standard. It is the applicant's burden to make a reasonable claim for confidentiality based on the California Public Records Act and other applicable laws.

Confidentiality Claims

Trade Secrets/Confidential Business Information

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 sections 6254(k), 6276, 6276.44; Civ. Code section 3426.1; Evid. Code section 1060.) 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, 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.

Here, the application does not meet the requirements for asserting a trade secret exemption as it does not state the nature of the competitive advantage, how the advantage would be lost, the value of the information, or the ease or difficulty with which the information could be acquired by others. It also does not explain what, if any, economic value is derived from the materials, and none is apparent. While the CEC has granted and may continue to grant confidentiality for certain materials as trade secrets in other cases, because the application here does not meet the requirements to claim a trade secret under California Code of Regulations, title 20, section 2505, the applicant has not made a reasonable

claim that the records are exempt as trade secrets.

Public Interest in Disclosure Section 6255(a)

Government Code section 6255(a) allows an agency to withhold records from public disclosure where on the facts of the case the public interest served by not disclosing the record "clearly outweighs the public interest served by disclosure of the record." This is referred to as the "balancing test."

The application asserts that the public interest served by not disclosing the records clearly outweighs the public interest served by the disclosure of the records because the material meets the definitions of CEII and critical infrastructure information (CII) in federal law and "could be useful to a person planning an attack on critical infrastructure." The application further asserts that non-disclosure will "protect against potential misuse of the information for illicit purposes, such as vandalism, tampering, or other third-party imposed damages."

The balancing test can be used to support the non-disclosure of information related to public safety. However, mere claims of potential mischief are insufficient, and facts demonstrating that specific harm is likely to result to the public or specific individuals are required to justify withholding information. "The critical point is that a court applying section 6255(a) cannot allow '[v]ague safety concerns' to foreclose the public's right of access. (Citations omitted)" (*American Civil Liberties Union Foundation v. Superior Court* (2017) 3 Cal.5th 1032, 1046 [221 Cal.Rptr.3d 832, 843, 400 P.3d 432, 441].)

For example, the Court of Appeal rejected a claim by the County of Santa Clara that GIS information showing the location of easements for Hetch Hetchy water pipelines should be withheld despite the County's claim that doing so was necessary to minimize the threat of terrorist attack. The court noted that the claim was overbroad and additionally undermined by the fact that the County had released the information, albeit under a non-disclosure agreement. "While we are sensitive to the County's security concerns, we agree with the trial court that the County failed to support nondisclosure on this ground." (*County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1329 [89 Cal.Rptr.3d 374, 395], as modified (Feb. 27, 2009).)

Here, the public has one of two interests, depending on the record. First, the public has a strong interest in knowing what may have caused the Russell City facility's May 27, 2021, explosion related to its steam turbine/generator and in any corrective actions the applicant is implementing. Second, the public has a generalized interest in being informed about the safe operation of power plants.

These interests may be outweighed by other considerations, such as the threat and danger to the Russell City facility and to public safety from disclosing the facility's exact plans, procedures, and locations for operation, risk management, emergency response, and fire protection, and that, if tampered or vandalized, could provoke an emergency at the facility. The applicant is concerned about site safety and security relevant to operating plans, risk management plans, emergency response plans, and fire protection procedures at Russell City, which is still in operation. Specifically, the applicant argues that the public interest in protecting the records from disclosure arises from preventing possible vandalism, tampering, or other third-party imposed damages and noted recent trespassing incidents at substations and other energy facilities.

Each of the records is discussed in detail below under the balancing test.

1. Pandemic Guidance Document Power Plant Operating Teams

This record contains general protocols for operating facilities during the pandemic based on guidelines from public health departments and the Occupational Safety and Health Administration (OSHA). Issues of Covid testing, facility cleaning, access by visitors, use of protective gear, and other topics are covered. This record is not facility specific, does not contain generation data or sensitive energy market information, and does not contain information that could result in the vandalism of a facility or CEII relating to the vulnerabilities of a specific generating facility. This record also does not directly relate to the May 27, 2021, event, and so the public's interest in disclosure is a generalized interest in power plant operation. This record is not customarily in the public domain. On balance, however, we find that the public's interest in the non-disclosure of these workplace safety procedures does not clearly outweigh the public's interest in understanding the workplace safety measures in place at an operating power plant.

2. Chemical Handling and Unloading: RCEC

This record sets forth various procedures and safety protocols for the handling and receiving of bulk chemicals. The record contains sufficient details that could enhance one's ability to strategically damage the Russell City facility by understanding the chemical handling process. Here, there are sufficient facts demonstrating that specific harm is likely to result to the public. The Russell City facility is located centrally in the City of Hayward, and these records contain details about the operations involved in the production and generation of energy that could be useful to a person planning an attack on critical infrastructure

through the provision of engineering and potential vulnerability information. These records may relate to the May 27, 2021, event and emergency response, and so the public has an important interest in these records. On balance, however, the public's interest in ensuring that details in these records do not fall into the wrong hands clearly outweighs the public interest in understanding the exact procedures and operation of these systems.

3. Spill Prevention Control and Countermeasure Plan

The Spill Prevention Control and Countermeasure Plan (SPCCP) provides for how the Russell City facility prevents and controls petroleum spills from leaving the project site. The SPCCP contains information required under 40 C.F.R. Part 112; thus, the SPCCP contains standardized information on both engineering and procedural methods to prevent and control oil spills. Other information in the SPCCP appears to be the same public information contained in CEC licensing documents, including descriptions of the facility, lists of equipment, and line diagrams of the facility. Because the SPCCP contains facility details similar to the facility information contained in CEC's licensing documents, the application does not make a reasonable claim that the SPCCP can be used to harm the facility. The consequences set forth in the application regarding vandalism and tampering do not appear to be a possibility from the disclosure of the SPCCP. Finally, the public has an interest in knowing how the facility will protect offsite habitat from facility oil spills. Therefore, the applicant has not made a reasonable claim that the public interest served by not disclosing the SPCCP clearly outweighs the public interest served by disclosure.

4. CalARP Risk Management Plan

The CalARP Risk Management Plan contains detailed information related to the handling and storage of ammonia-containing products used in the emissions control systems. The plan contains detailed diagrams of equipment and an analysis of the impacts if the equipment fails. Here, there are sufficient facts demonstrating that specific harm is likely to result to the public. The application has made a reasonable claim that knowledge of the CalARP Risk Management Plan would enhance one's ability to strategically damage the Russell City facility by understanding the safety containment protocols around the use and storage of ammonia. As such, the public interest in ensuring that details contained in the CalARP Risk Management Plan do not fall into the wrong hands clearly outweighs the public interest in knowing the specific facility protocols.

5. Russell City Energy Center Emergency Action Plan

The Emergency Action Plan contains detailed facility-specific information on the process for dealing with various types of emergencies at Russell City. The plan is drafted to meet the requirements of various laws and regulations, including National Electric Reliability Council requirements. Public knowledge of the procedures described in the plan could be used to increase the effectiveness of an attack on the facility. The Russell City facility is located centrally in the City of Hayward, and these records contain details about the production and generation of energy that could be useful to a person planning an attack on critical infrastructure through the provision of engineering and potential vulnerability information.

This is especially so given that knowledge of how plant staff will respond to a situation could allow for counter action. These records may relate to the May 27, 2021, event and emergency response, and so the public has an important interest in these records. On balance, however, the public's interest in ensuring that details in these records do not fall into the wrong hands clearly outweighs the public interest in the disclosure of this record.

6. Job Safety Analysis (including permits and job safety analyses)

This record contains the companywide process for assessing how various tasks at a facility are assessed and categorized to determine the appropriate safety protocols for the task. The Job Safety Analysis is not facility specific, and neither the Job Safety Analysis nor the individual permits and analyses contain generation data or sensitive energy market information, nor do they contain information that could result in the vandalism of a facility or CEII relating to the vulnerabilities of a specific generating facility. These records also do not directly relate to the May 27, 2021, event, and so the public's interest in disclosure is a generalized interest in power plant operation. These records are not customarily in the public domain. On balance, however, we find that the public's interest in the non-disclosure of these records does not clearly outweigh the public's interest in the disclosure of these records.

7. Hot work permit (including permits)

These records set forth the process for ensuring that welding and other work that could generate sparks will not cause a fire, and the filled-out permits show the implementation of the procedures. The procedures are general to all the

applicant's facilities and appear to contain general best management practices and protocols as set out in 29 CFR section 1910.252 - *Welding, Cutting, and Brazing*, and NFPA 51B - *Standard for Fire Prevention during Welding, Cutting, and Other Hot Work, 2019*. The procedures are not facility specific, and neither the procedures nor the individual permits contain generation data or sensitive energy market information, nor do they contain information that could result in the vandalism of a facility or CEII relating to the vulnerabilities of a specific generating facility. These records also do not directly relate to the May 27, 2021, event, and so the public's interest in disclosure is a generalized interest in power plant operation. These records are not customarily in the public domain. On balance, however, we find that the public's interest in the non-disclosure of these records does not clearly outweigh the public's interest in the disclosure of these records.

8. Confined space permit procedure (including permits)

These records set forth companywide safety procedures for performing work in confined spaces and include permits for confined-space work at the Russell City facility. The Confined Space Procedures are not facility specific except for an appendix that contains a list of components at Russell City that are considered confined space. The Confined Space Procedures are based on OSHA 29 CFR 1910.146, *Permit-Required Confined Spaces*. Neither the procedures nor the individual permits contain generation data or sensitive energy market information, nor do they contain information that could result in the vandalism of a facility or CEII relating to the vulnerabilities of a specific generating facility. These records also do not directly relate to the May 27, 2021, event, and so the public's interest in disclosure is a generalized interest in power plant operation. These records are not customarily in the public domain. On balance, however, we find that the public's interest in the non-disclosure of these records does not clearly outweigh the public's interest in the disclosure of these records.

9. Lockout/Tagout Procedure (Control of Hazardous Energy Standard)
(including permits)

These records set forth the companywide protocols to ensure systems being worked on do not become energized or otherwise operational, risking the safety of workers, and include permits evidencing the implementation of the protocols. The Lockout/Tagout (LOTO) Standard cites to the requirements of OSHA 29 CFR 1910.147 and OSHA Instruction CPL 02-00-147, *The Control of Hazardous Energy Enforcement Policy and Inspection Procedures*. In general, LOTO protocols are industry-wide best practices and implemented at all industrial

facilities. Neither the procedures nor the individual permits contain generation data or sensitive energy market information, nor do they contain information that could result in the vandalism of a facility or CEII relating to the vulnerabilities of a specific generating facility. These records also do not directly relate to the May 27, 2021, event, and so the public's interest in disclosure is a generalized interest in safe power plant operation. These records are not customarily in the public domain. On balance, however, we find that the public's interest in the non-disclosure of these records does not clearly outweigh the public's interest in the disclosure of these records.

10. Personal Protective Equipment Standard

This record describes the companywide requirements for using protective equipment when performing work. Information in the standard appears to be regarding general best management safety practices for industrial facilities based on 29 CFR 1910 Subpart I – *Personal Protective Equipment* 1910.132 - 1910.138; ANSI Z41-1991, *American National Standard for Personal Protection – Protective Footwear*; ANSI Z89.1-1986, *American National Standard for Personnel Protection – Protective Headwear for Industrial Workers- Requirements*; and ANSI Z87.1-1989, *American National Standard Practice for Occupational and Educational Eye and Face Protection*. This record is not facility specific, does not contain generation data or sensitive energy market information, and does not contain information that could result in the vandalism of a facility or CEII relating to the vulnerabilities of a specific generating facility. This record does not directly relate to the May 27, 2021, event, and so the public's interest in disclosure is a generalized interest in safe power plant operation. This record is not customarily in the public domain. On balance, however, we find that the public's interest in the non-disclosure of this record does not clearly outweigh the public's interest in the disclosure of this record.

11. Complaints, notices of violation, and citations from 2018 to 2021 for Russell City.

These records consist of complaints, notices of violation, and citations from 2018 to 2021. They do not contain any locational or other detailed information that would create a security risk. None of the information is of the type that could result in interfering with, compromising, or incapacitating the Russell City energy facility, especially as these records document past actions and activities that are no longer occurring. These records may relate to the May 27, 2021, event, and so the public has a strong interest in the disclosure of these records to understand what led to that event. On balance, we find that the public's interest

in non-disclosure does not clearly outweigh the public's interest in understanding the potential complaints, violations, and citations leading up to the May 27, 2021, event.

12. Fire Protection System Vol. 1 containing inspection, testing, and maintenance reports for Russell City's fire protection system.

These records contain numerous inspection, test, and maintenance reports reflecting the periodic testing of various fire protection systems at the Russell City facility in compliance with the fire code. The reports contain no information regarding inspection or repair costs. The Russell City facility is subject to regular inspection of its fire protection systems, as set forth in the conditions of certification and the fire code. The inspection reports are more than a year old and contain only brief summaries of the equipment being inspected. Given the limited details in the reports and the dates of the records, the applicant has not made a reasonable claim that the public's interest in the non-disclosure of the records clearly outweighs the public's interest in disclosure. Even if a system or component of a system failed at the time of inspection, such information would not necessarily reflect the current state of the system. Mere claims of potential mischief are insufficient, and facts demonstrating that specific harm is likely to result to the public or specific individuals are required to justify withholding information.

13. Fire Protection System Vol. 2 containing detailed schematics of the Russell City fire protection system.

These records contain site-specific and detailed information, including detailed schematics and line drawings, about the Russell City facility's fire protection system that could be used to interfere with, compromise, or incapacitate the Russell City energy facility. The Russell City facility is located centrally in the City of Hayward, and these records contain details about the production and generation of energy that could be useful to a person planning an attack on critical infrastructure through the provision of engineering and potential vulnerability information. These records may relate to the May 27, 2021, event and emergency response, and so the public has an important interest in these records. On balance, however, the public's interest in ensuring that details in these records do not fall into the wrong hands clearly outweighs the public interest in understanding the exact procedures and operation of these systems.

14. Photos of ammonia storage, bulk chemical storage, fire pumps, transformers, hazardous waste, and worker safety at Russell City.

The photos show Russell City facility equipment and related systems and active LOTO permits. Public knowledge of the detailed information shown in the photos could be used to increase the effectiveness of an attack on the Russell City facility. This is especially so given that the pictures show the ammonia tanks, hazardous waste tanks, and containment and fire panels. The Russell City facility is located centrally in the City of Hayward, and these records contain details about the production and generation of energy that could be useful to a person planning an attack on critical infrastructure through the provision of engineering and potential vulnerability information. The photos do not directly relate to the May 27, 2021, event, and so the public's interest in disclosure is a generalized interest in power plant operation. Russell City is not open to the public, so the information in these photos is not customarily in the public domain. Thus, the public interest served by not disclosing the photos clearly outweighs the public interest served by the disclosure of the photos.

Critical Energy Infrastructure Information

The application references protection against the release of CII and CEII, although it does not cite to Government Code section 6254(ab). The information explaining why the records are similar to CII and CEII is relevant to the discussion above for the balancing test. However, no specific exemption under Government Code section 6254(ab) applies as the conditions in Government Code section 6254(ab) are not met.

At the state level, Government Code section 6254(ab) protects from public disclosure certain infrastructure information provided the following are met: (1) the information is CII, as defined in United States Code, title 6, section 131(3), and (2) the information is voluntarily submitted to the Office of Emergency Services (OES) for use by that office. Importantly, Government Code section 6254(ab) expressly states that the subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

Similar to Government Code section 6254(ab), the Department of Homeland Security (DHS) and Federal Energy Regulatory Commission (FERC) have processes in place to designate information as protected CII or CEII, but the same limitations found in Government 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 applications do not state whether the records have been submitted to a federal agency for designation as CII or CEII, so we assume they have not. The applications also do not state if the records have been submitted to OES. Thus, there has been no opportunity for DHS, FERC, or OES to consider whether the records warrant a designation of CII or CEII. As a result, the applicant has not made a reasonable claim that the records can be withheld under CII or CEII as the application does not state whether the records at issue have been provided to the relevant federal or state agencies for designation or that the records in the possession of the CEC were obtained from DHS, FERC or OES.

Executive Director's Determination

For the reasons stated above, the following records, which include detailed information about the design and operation of Russell City and which are currently in use at the Russell City facility, are granted confidential designation for the life of the facility or until such time as they may be publicly released:

2. *Chemical Handling and Unloading: RCEC*
4. *CalARP Risk Management Plan*
5. *Russell City Energy Center Emergency Action Plan*
13. *Fire Protection System Vol. 2 containing detailed schematics of the Russell City fire protection system*
14. *Photos of ammonia storage, bulk chemical storage, fire pumps, transformers, hazardous waste, and worker safety at Russell City*

The following records, none of which contain detailed information about the design and operation of Russell City, do not contain generation data or sensitive energy market information, and do not contain information that could result in the vandalism of a facility or critical energy infrastructure information relating to the vulnerabilities of a specific generating facility, are denied confidential designation:

1. *Pandemic Guidance Document Power Plant Operating Teams*
3. *Spill Prevention Control and Countermeasure Plan*
6. *Job Safety Analysis (including permits and job safety analyses)*
7. *Hot work permit (including permits)*

- 8. Confined space permit procedure (including permits)*
- 9. Lockout/Tagout Procedure (Control of Hazardous Energy Standard) (including permits)*
- 10. Personal Protective Equipment Standard*
- 11. Complaints, notices of violation, and citations from 2018 to 2021 for Russell City.*
- 12. Fire Protection System Vol. 1 containing inspection, testing, and maintenance reports for Russell City's fire protection system.*

You may request that the CEC determine the confidentiality of records that the executive director denied confidential designation. You have 14 days to request that the CEC determine the confidentiality of the record. If you make such a request, the CEC will conduct a proceeding pursuant to the provisions in California Code of Regulations, title 20, section 2508.

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 confidential records is issued by the CEC's chief counsel. Under California Code of Regulations, title 20, section 2507, the executive director may disclose records, or release records previously designated as confidential, in certain circumstances. The procedures for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set forth in the California Code of Regulations, title 20, sections 2506-2508.

You may seek a confidential designation for information that is substantially similar to information 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 email Chief Counsel Linda Barrera at linda.barrera@energy.ca.gov

Sincerely,



Drew Bohan
Executive Director