

DOCKETED

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Project Title:	01-AFC-7C Russell City Energy Company
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Document Title:	RCEC Application for Confidential Designation
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Filer:	Amanda Cooley
Organization:	Ellison Schneider Harris & Donlan LLP
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April 12, 2022

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 on behalf of the Russell City Energy Center.

Please contact me at 916-447-2166 or 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
Ellison Schneider Harris & Donlan LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Tel: (916) 447-2166
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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 submitted to California Energy Commission staff on behalf of the Russell City Energy Center (“RCEC”):

Title	Document Description
Biological Resources Assessment following May 2021 Incident (“Biological Resources Assessment”)	Memorandum summarizing observations from biologist site visit to the RCEC following the May 2021 steam turbine incident.

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

The Applicant is requesting confidential designation of the following information contained in the Biological Resources Assessment: (1) personnel and contractor information, including names, phone numbers, and email addresses and (2) photographs from the site visit (collectively, the “Information”). The Information is highlighted in the Biological Resources Assessment submitted with this Application and redacted in the docketed public version. For the purposes of this Application, the photograph number and descriptions for the photographs proposed for redaction have been highlighted. The Applicant is not proposing that the descriptions themselves be granted confidential designation.

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

The Information 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.*

The Public Records Act (“PRA”) exempts from disclosure “[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy.” (Gov’t Code § 6254(c).) The Information includes photographs of employees, employee and contractor names, positions, contact information, and other information that if released would constitute an

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unwarranted invasion of privacy and potentially interfere with the performance of duties by critical infrastructure workers.

The PRA also 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.” (Govt. Code § 6255(a).) The public interest served by not disclosing the Information clearly outweighs the public interest served by disclosure as nondisclosure will protect against potential misuse of the information for illicit purposes, such as cybersecurity or physical attacks on the RCEC, or other potential damage from third-parties, as well as protecting the privacy concerns of the named individuals.

With respect to employee and contractor names and information, the public interest in nondisclosure is outweighed by the public disclosure of this limited information. Critical energy infrastructure, including the electricity sector, are subject to increasing threats from cyber-attacks and influence operations. In January 2022 and in a March 2022 update, the Cybersecurity & Infrastructure Security Agency (“CISA”) reported on Russian-based hackers targeting the energy sector.¹ These Russian state-sponsored advanced persistent threat (“APT”) actors conducted a multi-stage intrusion campaign in which they gained remote access to U.S. and international Energy Sector networks, deployed industrial control system (“ICS”) focused malware, and collected and exfiltrated enterprise and ICS-related data.”² On February 18, 2022, CISA released information describing the increasing “risk and potency of influence operations to U.S. critical infrastructure” that have the specific goal of disrupting U.S. critical infrastructure and undermining U.S. interests and authorities.³ Hacking and other cyber activities may be used to attack infrastructure.⁴ Limiting the disclosure of critical infrastructure worker names and information is particularly important, given emerging threats of cyber security where employees’ names and credentials are “spoofed” for exploitation, sometimes using such specific personal identifying information for email-based “phishing” or “spear phishing” activities. Similarly, ransomware, trojans, spyware, viruses, worms, and any other types of attacks that leverage software in a malicious way most often uses employee names and personnel information to help design illicit physical and cyber entry methods.

With respect to the photographs contained in the Biological Resources Assessment, the public interest in nondisclosure is outweighed by the public disclosure of this limited information. The pictures contain images of the RCEC site, personnel, and adjacent off-site areas. Such project and site-specific information could be exploited for illicit activities. This information is similar to photographs that have been previously granted confidential designation by the Commission (See, TN#: 241378), and should be granted confidential designation for the same reasons.

¹ CISA, Alert (AA22-011A), Understanding and Mitigating Russian State-Sponsored Cyber Threats to U.S. Critical Infrastructure, (Original release date: January 11, 2022; last revised: March 01, 2022), <https://www.cisa.gov/uscert/ncas/alerts/aa22-011a>.

² *Id.*

³ CISA, *Preparing for and Mitigating Foreign Influence Operations Targeting Critical Infrastructure* (February 2022), https://www.cisa.gov/sites/default/files/publications/cisa_insight_mitigating_foreign_influence_508.pdf.

⁴ *Id.*

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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.*


A redacted version of the Biological Resources Assessment has been docketed in the compliance docket for the RCEC. The Applicant considered whether it would be possible to aggregate or mask the Information subject to this Application; however, given the nature of the information aggregation and masking is infeasible.

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 unredacted version of the Biological Resources Assessment has been previously provided to CEC Staff and is available to employees or consultants providing essential services to the Russell City Energy Center. The resume for the Jacobs biologist was not included with the docketed version of the Biological Resources Assessment as the information therein can be used to ascertain the name of the contractor who conducted the site visit, which has been proposed for redaction for privacy, cybersecurity, and site security concerns.

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: April 12, 2022

By: 
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