

**DOCKETED**

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April 26, 2022

**VIA EMAIL**

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SUPPLEMENTAL APPLICATION FOR CONFIDENTIAL DESIGNATION:  
Russell City Energy Center Investigation Report (01-AFC-07C)

Dear Samantha Neumyer:

The California Energy Commission (CEC) received Russell City Energy Company, LLC's (applicant) supplemental application for confidential designation, dated April 15, 2022. The supplemental application provides additional information to support confidential designation for three proposed redactions in the document titled "Investigation Report: Calpine Russell City Steam Turbine/Generator Event," dated November 16, 2021:

- (1) Information regarding the scope, nature, and specific equipment damaged in the steam turbine event (sentences on pp. 5 and 10).
- (2) Piping flow information (bullets on pages 30-31).
- (3) Name of the contractor who inspected damaged equipment (page 34).

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 Public Records Act and other applicable laws.

The original November 23, 2021, application identified three bases for confidential designation: (1) trade secrets/proprietary information based on

Government Code sections 6254.7(d) and 6254.15; (2) Government Code section 6255(a), commonly referred to as “the balancing test”; and (3) Government Code section 6254(ab) for critical infrastructure information or critical energy infrastructure information. The term of the confidential designation requested was for the life of the facility. The CEC responded to the November 23rd application stating that some information may be confidential as trade secret or under the balancing test, while other information should be publicly available, and that the CEC would work with the applicant to prepare a publicly disclosable document that redacts any confidential information. The April 15, 2022, supplemental application addresses some of these proposed redactions.

### **Trade Secrets/Proprietary 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, §§ 6254(k), 6276, 6276.44; Evid. Code, § 1061(a); Civ. Code, § 3426.1(d).) 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.

Civil Code section 3426.1(d) defines “trade secret” as:

“[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

(Civ. Code, § 3426.1(d); *See also* Gov. Code, §§ 6254(k), 6276, 6276.44; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

*Scope, Nature, and Specific Equipment Damage (pp. 5 & 10)*

The supplemental application claims that the scope, nature, and specific equipment damage described on pages 5 and 10 are a trade secret. The applicant states that the information has independent economic value from not being generally known to the public or to competitors and impacts the facility's competitiveness on a going-forward basis. The applicant states that the scope of the damage directly correlates to the repair costs of the facility, which can enable competitors to ascertain the cost of repairs to the facility. The applicant states that the cost of repairs affects operational and maintenance costs, which affect the facility's market competitiveness. Finally, the application states the information is accessible only to applicant's employees, contractors, or consultants providing essential services to the facility, and has been disclosed only to agencies with regulatory oversight over the information or the facility.

The applicant cites Government Code sections 6254.7(d) and 6254.15. These provisions do not apply because the information does not include emissions data or building code violation information, or relate to retaining, locating, or expanding a facility in California.

The CEC further disagrees that the information is a trade secret. The sentences do not contain specific model numbers, sizes, or functionalities of the equipment damaged, do not detail the damage, and do not indicate the cost to fix the damaged equipment. It is not evident how economic value can be derived from this information, which speaks only in general terms and not specifically about the repair costs. The information cannot be used to determine the facility's actual or anticipated repair costs or actual or anticipated equipment needs. Therefore, this information is not trade secret and is subject to disclosure.

### **Public Interest in Disclosure/Balancing Test**

Government Code section 6255(a) allows an agency to withhold records from public 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." This is referred to as the "balancing test."

The balancing test can be used to support the nondisclosure 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.)

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 nondisclosure 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.)

The public has a strong interest in knowing what may have caused the May 27 event, what corrective actions will be implemented, and how the facility is being managed as a result of the CEC's investigation and analysis. The facility is in Hayward, an urban area. In comments filed with the CEC, Hayward noted that the explosion resulted in "shards of metal thousands of feet away," including a fifteen-pound piece of metal that fell through the city's Housing Navigation Center.<sup>1</sup> This interest may be outweighed by considerations such as the threat and danger to the facility and the safety of facility workers and the public from disclosing the exact configuration of facility systems that, if tampered with or vandalized, could interfere, compromise, or incapacitate the facility.

In light of this legal framework, each of the documents for which the applicant requested nondisclosure under the balancing test is discussed below.

*Piping Flow Information (pp. 30-31)*

The supplemental application asserts that the public interest served by not disclosing the piping flow information clearly outweighs the public interest served by disclosure of this information. The applicant states that not disclosing the piping flow information protects against the misuse of the information for illicit purposes, such as vandalism, tampering, or other third-party imposed damages. The applicant notes that attacks on energy infrastructure are a real and contemporary threat and that the specific engineering, vulnerability, and detailed design information in these bullets could be used to reverse engineer the conditions that resulted in the steam turbine event.

The CEC previously agreed that some of the piping flow information may have contained some specific details about the facility that could pose a risk to the security of the facility. However, the CEC has reconsidered its initial assessment based on the information provided in the supplemental application and now finds

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<sup>1</sup> Docket No. 01-AFC-07, TN 238635.

that the public's interest in nondisclosure of this information does not clearly outweigh the public's interest in disclosure. The public has a very strong interest in understanding what conditions led to the May 27 incident, which conditions are explained in the piping information. Although the public also has a strong interest in protecting against security risks at the facility, the supplemental application's claims of potential mischief, and lack of facts to demonstrate a specific harm that is likely to result from disclosure of this information, does not support nondisclosure. Therefore, this information is not confidential under the balancing test.

*Contractor Name (p. 34)*

The supplemental application asserts that the public interest served by not disclosing the contractor company name clearly outweighs the public interest served by disclosure of this information. The applicant states that not disclosing the contractor name protects against doxing or harassment of the business and prevents potential cybersecurity and physical site security risks to the facility.

The CEC disagrees that the public's interest in nondisclosure of the contractor's name clearly outweighs the public's interest in disclosure. First, the name of the contractor is not confidential information and the fact that the contractor works on facilities like this is general knowledge and available on their website. Second, while the CEC is aware of and sensitive to phishing, doxing, and other cybersecurity threats, redacting this information from the report does not prevent the occurrence of such threats. In contrast, the public has a strong interest in disclosure of the contractor's name as information relevant to the incident at the facility. Therefore, the CEC finds that the public's interest in nondisclosure of this information does not clearly outweigh the public's interest in disclosure of this information.

**Conclusion**

The CEC finds that neither the piping flow information, the scope of equipment damage, nor the contractor's name are confidential. Therefore, these should not be redacted from the document.

You may request that the CEC determine the confidentiality of information that the executive director denied confidential designation. You have until April 29, 2022, to appeal this determination. 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. If you do not, the CEC requests that you

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publish the Investigation Report with agreed upon redactions in the CEC docket on April 29, 2022.

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 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 contact Kristen Driskell at [Kristen.Driskell@energy.ca.gov](mailto:Kristen.Driskell@energy.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan  
Executive Director