

DOCKETED

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Via Email

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**Application for Confidential Designation: Potentia-Viridi Battery Storage Energy Storage System Project
Docket No. 24-OPT-04**

Dear Mr. Leitch, Mr. Palmer and Ms. Strain:

The California Energy Commission (CEC) has received an Application for Confidentiality from Levy Alameda, LLC (Applicant), docketed August 1, 2024, (TN 258249) covering the following records:

- Confidential, Appendix 2B, Transmission Line Designs, July 2024;
- Confidential, Appendix 2D, Interconnection Study, February 12, 2021 Queue Cluster 13 Phase I Interconnection, Study Report for Potentia-Viridi Project;
- Confidential, Appendix 2D, Interconnection Study, November 22, 2021, Queue Cluster 13 Phase II, Interconnection Study Report for PG&E, Greater Bay Area;
- Confidential, Appendix 2E, Interconnection Agreement, October 31, 2022 Large Generator Interconnection, Agreement Among Levy Alameda, LLC, Pacific Gas and Electric Company, and California Independent System Operator Corporation for Potentia-Viridi Project;
- Confidential, Appendix 3.2C CNDDDB Map, July 2024, Map of search results of records in the California Natural Diversity Database (CNDDDB);
- Confidential, Appendix 3.3B Cultural Records Search Results and NAHC Records, August 2023;

- Confidential, Appendix 3.8B Paleontological Records Search Results February 16, 2024; and
- Confidential, Appendix 3.10A Socioeconomic Study July 15, 2024, Study of the Project's socioeconomic impacts.

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."

Discussion

Appendix 2B (Transmission Line Designs)

The application states that Appendix 2B (Transmission Line Designs) should be designated confidential to preserve confidentiality of the Applicant's trade secrets and commercially sensitive information related to project costs, and to protect sensitive information related to the design of energy infrastructure. The application states the documents should be granted confidentiality under California Public Records Act, referencing Government Code sections 7927.605(a), 7927.705, Evidence Code section 1060, and Civil Code section 3426.1(d). The application also states that the public interest served by not disclosing this information clearly outweighs the public interest served by disclosure. (Gov. Code, § 7922.000.)

To support this position, the application claims that it is in the public's interest to have nondisclosure of this information to ensure industry competitiveness and maintain trade secrets. According to the Applicant, disclosure of this information would create a significant market disadvantage for the Applicant, compromise the Applicant's position during contract negotiations, provide competitors an advantage, and compromise the Applicant's competitive position in the California Independent System Operator (CAISO) power market. This could result in higher energy prices for consumers. Finally, the Applicant states that Appendix 2B details design of energy infrastructure, which is at risk for vandalism, terrorism, or other bad acts.

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, §§ 7927.705, 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

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, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

California Code of Regulations, title 20, section 2505 (a)(1)(D), provides 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.

The application addresses the four elements in California Code of Regulations, title 20, section 2505 (a)(1)(D) as follows:

- 1) *The specific nature of the advantage* – Commercially sensitive project design information for the facility, including project costs and detailed design information.
- 1) *How the advantage would be lost* – Disclosure of this information would lead to the Applicant's loss of a competitive advantage. Public disclosure of this information would negatively impact the Applicant's competitive ability to negotiate with third parties on an ongoing basis given the pricing that has been secured and reflected in these estimates. Disclosure of this information would enable counterparties and industry competitors to reverse-engineer expected returns, capital cost components, and other key details of the project; and lessen the Applicant's negotiating power and market competitiveness.
- 2) *The value of the information to the applicant* – Engineering information has independent economic value from not being generally known to the public or applicant's competitors who can obtain economic value from its disclosure. Specific process flow information can be used to determine costs and generation from the facility.
- 3) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information could not be legitimately acquired or duplicated by others. The Applicant's project cost figures have been carefully assembled, leveraging various internal resources, including commercial partnerships, existing agreements, proprietary in-house knowledge, and prior project experience. Detailed design information for the project's energy infrastructure has not been disclosed publicly.

Executive Director's Determination

The applicant has made a reasonable claim that Appendix 2B (Transmission Line Designs) can be maintained as confidential for the life of the facility. As such, the Applicant's request for confidential designation is granted.

Appendix 2D (Interconnection Study), Appendix 2E (Interconnection Agreement)

The application states that Appendix 2B (Transmission Line Designs), Appendix 2D (Interconnection Study), and Appendix 2E (Interconnection Agreement) should be designated confidential to preserve confidentiality of the Applicant's trade secrets and commercially sensitive information, and because the CAISO has designated it as confidential to protect commercially sensitive information that can give competitors or potential partners or off takers an advantage. The application states these documents should be granted confidentiality under California Public Records Act, referencing Government Code sections 7927.605(a), 7927.705, Evidence Code section 1060, and Civil Code section 3426.1(d).

The application also states that the public interest served by not disclosing this information clearly outweighs the public interest served by disclosure. (Gov. Code, § 7922.000.) To support this position, the Applicant claims it is in the public's interest to have nondisclosure of this information to ensure industry competitiveness and maintain trade secrets, thereby maintaining the competitiveness of the CAISO power market and consumer energy prices to competitive levels. The application states disclosure of this information would create a significant market disadvantage for the Applicant, compromise the Applicant's position during contract negotiations, provide competitors an advantage, and compromise the Applicant's competitive position in the CAISO power market through the disclosure of trade secrets; which could result in higher energy prices for consumers.

Under California Code of Regulations, title 20, section 2505(b), "When another federal, state, regional, or local agency or state-created private entity, such as the California Independent System Operator, possesses information pertinent to the responsibilities of the Commission that has been designated by that agency as confidential under the Public Records Act, or the Freedom of Information Act, the Commission, the Executive Director, or the Chief Counsel may request, and the agency shall submit the information to the Commission without an application for confidential designation. The Commission shall designate this information confidential."

Executive Director's Determination

The Applicant indicated that CAISO has designated Appendix 2D and 2E as confidential and the information is pertinent to the responsibilities of the CEC. The Applicant has made a reasonable showing that the information contained in the documents should be maintained as confidential due to CAISO's designation. As such, the Applicant's request for confidential designation of the documents listed above is granted.

Appendix 3.2C (CNDDDB Map)

The California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDDB) contains detailed maps reflecting the location of biological resources based on surveys and sightings. The CNDDDB contains language within the database that restricts public disclosure of maps of certain resolution and CDFW has met with CEC staff to confirm the need to protect these maps. Consistent with this direction from CDFW, CEC staff directed the Applicant to submit maps of certain resolution under confidential cover.

The application identifies that Appendix 3.2C (CNDDDB Map) should be designated as confidential to protect sensitive species and habitat. The application explains that documents are required to be submitted under confidential cover. (Cal. Code Regs., tit. 20, § div. 2, ch. 5, app. B, subd. (g)(13)(A).) The application also claims that the public interest served by not disclosing this information clearly outweighs the public interest served by disclosure. (Gov. Code, § 7922.000.) The application provides that the CNDDDB and its associated databases are proprietary databases owned by CDFW, and their use is limited to subscribed users who, under the CNDDDB License Agreement and the CNDDDB Data Use Guidelines, may not release the data to the public or non-subscribers without permission from CDFW unless it is displayed in a way or at a scale (1:350,000 or greater) such that viewers cannot determine the precise location of the resources mapped.

Confidentiality of this information is necessary to abide by the CNDDDB License Agreement and CNDDDB Data Use Guidelines. Additionally, in support of the position that the information should be designated confidential, the application cites CDFW in stating that “there is the very real possibility that some people will use the detailed location information to do harm to a species or its habitat. Because of the sensitivity of the data, we try to limit the level of location detail that is made readily available to the public.” (CDFW (2011).) The Applicant claims that this information if disclosed to the public, could result in intentional harm to sensitive species and habitat and that the public interest will be served by nondisclosure by preventing potential intentional harm to sensitive species and habitat.

Executive Director’s Determination

The Applicant has made a reasonable claim that Appendix 3.2C should be maintained as confidential indefinitely which is consistent with the directions from CDFW. Protection of sensitive species and habitat location information to protect against intentional harm is in the public interest. As such, the Applicant’s request for confidential designation of the documents listed above is granted.

Appendix 3.3B (Cultural Records Search Results and NAHC Records)

Appendix 3.3B contains information related to the location of cultural resources, archaeological resources, and Native American sites. The application states that Appendix 3.3B should be kept confidential indefinitely to protect cultural resources. The application identifies that these documents are required to be submitted under confidential cover, referencing applicable requirements. (Cal. Code Regs., tit. 20, § div. 2, ch. 5, app. B, subd. (g)(2)(C).) Records of Native American and archaeological site information are protected from disclosure pursuant to Government Code sections 7927.000 and 7927.005. The application also states that the public interest served by not disclosing this information clearly outweighs the public interest served by disclosure. (Gov. Code, § 7922.000.)

According to the Applicant, nondisclosure of this information will protect these resources from looting or other damage and will be consistent with the federal Archaeological Resources Protection Act, which establishes a clear, national legal policy that all types of

archaeological, paleontological, and cultural resource site locations on public lands must be protected to preserve them. (54 U.S.C. § 306131.)

The California Public Records Act provides for the nondisclosure of archaeological site information and records of Native American places, features, and objects and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency. (Gov. Code, §§ 7927.000, 7927.005.)

The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations on public lands must be protected to preserve them. (54 U.S.C. § 306131.)

Government Code section 7922.000 provides that an agency may withhold information from disclosure where the public interest served by nondisclosure clearly outweighs the public interest of disclosure.

Executive Director's Determination

Protection of cultural and archeological resource location information to prevent looting and unauthorized collection is in the public interest and expressly covered under the law. The Applicant has made a reasonable claim that the documents identified above, which contain information on cultural and archeological resources, records, reports, and maps, can be maintained as confidential indefinitely. As such, the Applicant's request for confidential designation of the documents listed above is granted.

Appendix 3.8B (Paleontological Records Search Results)

The application states that Appendix 3.8B (Paleontological Records Search Results) should be designated confidential indefinitely to protect paleontological resources. The application states these documents are required to be submitted to CEC under confidential cover, referencing applicable requirements. (Cal. Code Regs., tit. 20, § div. 2, ch. 5, app. B, subd. (g)(16)(D).) The application also states that the public interest served by not disclosing this information clearly outweighs the public interest served by disclosure. (Gov. Code, § 7922.000.) According to the application, Appendix 3.8B (Paleontological Records Search Results) contains information related to the location of paleontological resources. Nondisclosure of this information will protect these paleontological resources from unauthorized excavation or other damage and would be consistent with the federal Archaeological Resources Protection Act, which establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations on public lands must be protected to preserve them. (54 U.S.C. § 306131.)

The California Public Records Act provides for the nondisclosure of archaeological site information and records of Native American places, features, and objects and reports maintained by, or in the possession of, the Department of Parks and Recreation, the

State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency. (Gov. Code, §§ 7927.000, 7927.005.)

The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations on public lands must be protected to preserve them. (54 U.S.C. § 306131.)

Government Code section 7922.000 provides that an agency may withhold information from disclosure where the public interest served by nondisclosure clearly outweighs the public interest of disclosure.

Executive Director's Determination

Protection of paleontological resource location information to protect paleontological resources is in the public interest and expressly covered under the law. The Applicant has made a reasonable claim that the documents identified above can be maintained as confidential indefinitely. As such, the Applicant's request for confidential designation of the documents listed above is granted.

Appendix 3.10A (Socioeconomic Study)

The application states that highlighted information in the proposed redacted version of Appendix 3.10A (Socioeconomic Study) should be designated confidential indefinitely to prevent a loss of competitive advantage from disclosure of the Applicant's trade secrets and commercially sensitive information. The application states the documents should be granted confidentiality under California Public Records Act, referencing Government Code sections 7927.605(a), 7927.705, Evidence Code section 1060, and Civil Code section 3426.1(d). The application also claims that the public interest served by not disclosing this information clearly outweighs the public interest served by disclosure. (Gov. Code, § 7922.000.)

To support this position, the application states that public disclosure of this information would negatively impact the Applicant's competitive ability to negotiate with third parties on an ongoing basis given the pricing that has been secured and reflected in these estimates. Disclosure of this information would enable counterparties and industry competitors to reverse-engineer expected returns, cost components, and other key details of the project that would lessen the Applicant's negotiating power and market competitiveness. The Applicant claims that the information provided could not be legitimately acquired or duplicated by others and that cost figures have been carefully assembled, leveraging various internal resources, including commercial partnerships, existing agreements, proprietary in-house knowledge, and prior project experience.

The application addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) as follows:

- 1) *The specific nature of the advantage* – Estimated construction costs and estimated operations and maintenance costs for the Project constitute trade secrets because they reflect the Applicant’s forecasted economic standing. The Applicant has a competitive advantage in that this information is not known by other parties, including counterparties with whom it is negotiating and industry competitors.
- 2) *How the advantage would be lost* – Disclosure of this information would lead to the Applicant’s loss of a competitive advantage. Public disclosure of this information would negatively impact the Applicant’s competitive ability to negotiate with third parties on an ongoing basis given the pricing that has been secured and reflected in these estimates. Disclosure of this information would enable counterparties and industry competitors to reverse-engineer expected returns, cost components, and other key details of the project that would lessen the Applicant’s negotiating power and market competitiveness. If counterparties were internally estimating a materially different amount than what is disclosed, this information would impact and inform their negotiation strategy going forward. Industry competitors also would be able to use this information to further their own negotiations with third parties by using this data as leverage, enhancing their competitiveness and therefore negatively impacting the Applicant.
- 3) *The value of the information to the applicant* – Engineering information and associated cost estimates 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.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information could not be legitimately acquired or duplicated by others. The Applicant’s project cost figures have been carefully assembled, leveraging various internal resources, including commercial partnerships, existing agreements, proprietary in-house knowledge, and prior project experience.

Executive Director’s Determination

The Applicant has made a reasonable claim that highlighted information in the proposed redacted version of Appendix 3.10A (Socioeconomic Study) can be maintained as confidential. As such, the Applicant's request for confidential designation of the proposed redacted version of Appendix 3.10A is granted.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, 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 and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Patrick Leitch
Kelene Strain
Dana Palmer
September 04, 2024
Page 9

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a stylized flourish at the end.

Drew Bohan
Executive Director