

**DOCKETED**

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<b>Project Title:</b>	01-AFC-7C Russell City Energy Company
<b>TN #:</b>	240433
<b>Document Title:</b>	RCEC Application for Confidentiality Designation
<b>Description:</b>	Application for Confidentiality
<b>Filer:</b>	Patricia Carlos
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Energy Commission
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Samantha G. Neumyer  
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October 11, 2021

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 for facility operations, photographs, and inspection documents provided in advance of the California Energy Commission's compliance site inspection of the Russell City Energy Center.

Please feel free to contact us at me at 916-447-2166 or [sgn@eslawfirm.com](mailto:sgn@eslawfirm.com) should you have any questions or require additional information. Thank you.

Sincerely,

Samantha G. Neumyer  
Attorney for Russell City Energy Center

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1. *Specifically indicate those parts of the record which should be kept confidential.*

Russell City Energy Company, LLC (“Applicant”) seeks confidential designation for certain operational, engineering, vulnerability, and detailed design information (“Information”) regarding the Russell City Energy Center identified below. These materials have been identified as containing information similar to critical energy infrastructure information (“CEII”) as defined in Title 18, section 388.113 of the Code of Federal Regulations and/or critical infrastructure information as defined in Title 6 of the United States Code, section 131(3). These materials also contain potential trade secret and confidential business information. As such, the Applicant is seeking confidential designation of the Information provided to California Energy Commission Staff in advance of the compliance site inspection of the Russell City Energy Center, including, but not limited to:

- Site photographs;
- Fire Protection System information, including inspection reports;
- Spill Prevention Control and Countermeasures Plan;
- Emergency Action Plan;
- Generator Step Up information;
- Job Safety/Hazard Analyses procedures and documents;
- Safety Management Procedures; and
- Risk Management Plan.

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

The documents should be kept confidential for the operating life of the facility.

3. *Cite and discuss (i) the provisions of the Public Records Act or other law which allow the commission to keep the record confidential and (ii) the public interest in nondisclosure of the record.*

The Public Records Act protects from disclosure “[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law.” (Gov’t Code § 6254(k).) The Public Records Act 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.” (Gov’t Code § 6255(a).)

The public interest served by not disclosing the materials identified above in Section (1) clearly outweighs the public interest served by disclosure. The materials included in Section (1) include information that could be defined as CEII by FERC. CEII includes “specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure” that:

- Relates details about the production, generation, transportation, transmission, or distribution of energy;

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- Could be useful to a person in planning an attack on critical infrastructure;
- Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and
- Does not simply give the general location of the critical infrastructure. (18 C.F.R. § 388.113(c)(2)).

The materials provided to CEC Staff do not simply give the general location of the critical infrastructure. They contain details about the production and generation of energy and could be useful to a person planning an attack on critical infrastructure. Information designated by FERC as CEII is exempt from mandatory disclosure under the federal Freedom of Information Act (“FOIA”), and “shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision, or tribal law requiring public disclosure of information or records.” (18 C.F.R. § 388.113(c)(1)).

Similarly, the materials provided to CEC Staff meet the definition of “critical infrastructure information.” Title 6, section 131 of the U.S. Code defines “critical infrastructure information” as “information not customarily in the public domain and related to the security of critical infrastructure or protected systems,” such as information relating to the “ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation,” including security testing, risk evaluation, risk management planning, or risk audit, or information relating to “any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.” Section 131 also defines the term “protected systems” to include “any service, physical or computer-based system, process, or procure that directly or indirectly affects the viability of a facility of critical structure.” The materials provided to CEC Staff contain information not customarily in the public domain and are related to the security of critical infrastructure or protected systems. The materials include information relating to risk management planning, operational and other information necessary to keep the Russell City Energy Center operating in a safe, secure, and reliable manner.

Furthermore, nondisclosure of the Information will protect against potential misuse of the information for illicit purposes, such as vandalism, tampering, or other third-party imposed damages (like recent cases involving substations and other energy facilities). The public interest in preventing such acts clearly outweighs the public interest served by disclosure of the limited information for which the Applicant is seeking confidential designation.

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.*

The Applicant considered whether it would be possible to aggregate or mask the Information. It may be possible to aggregate the information or redact certain portions of the Information. However, the Applicant requests that the CEC consult with the Applicant to make this determination based on the potential production of materials subject to the Application.


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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 Information is accessible only to employees or consultants providing essential services to the Russell City Energy Center. The Information has been disclosed to certain regulatory agencies such as the CEC that have regulatory oversight over either the Information or the Russell City Energy Center.

*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: October 11, 2021

By:   
Samantha G. Neumyer  
Ellison Schneider Harris & Donlan LLP  
*Attorneys for Russell City Energy Center*