

DOCKETED

Docket Number:	01-EP-08C
Project Title:	Calpine Gilroy Emergency Process - Compliance
TN #:	240840
Document Title:	Gilroy Energy Center's Application for Confidential Designation
Description:	N/A
Filer:	Amanda Cooley
Organization:	Ellison Schneider Harris & Donlan LLP
Submitter Role:	Applicant Representative
Submission Date:	12/6/2021 11:53:34 AM
Docketed Date:	12/6/2021



December 6, 2021

Drew Bohan
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Gilroy Energy Center (01-EP-08C): Application for Confidential Designation

Dear Mr. Bohan:

Pursuant to Sections 2501 et seq., of Title 20 of the California Code of Regulations, Gilroy Energy Center, LLC hereby submits this Application for Confidential Designation for facility operations and inspection documents provided in advance of the California Energy Commission's inspection of the Gilroy Energy Center. This Application supplements the one submitted on April 7, 2021.

Please feel free to contact me at 916-447-2166 or sgn@eslawfirm.com should you have any questions or require additional information. Thank you.

Sincerely,

/s/

Samantha G. Neumyer
Ellison Schneider Harris & Donlan LLP

Attorneys for Applicant

APPLICATION FOR CONFIDENTIAL DESIGNATION
Gilroy Energy Center (01-EP-08C)

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.*

Gilroy Energy Center, LLC (“Applicant”) seeks confidential designation for certain operational, engineering, vulnerability, and detailed design information (“Information”) regarding the Gilroy Energy Center identified below, which were provided to CEC Staff in advance of a site inspection of the facility.

Title	Description	# of Pages
1. COVID-19	Calpine Visitors Questionnaire, Pandemic Guide for Power Operations	150
2. SAFETY MGMT PROCEDURES	Chemical Handling and Unloading Final, Completed Ammonia Offload	34
3. GEC SPCC PLAN	Spill Prevention Control and Countermeasure Plan	93
4. RMP	RMP – GEC RMP Plan	471
5. FIRE PROTECTION SYSTEMS	Fire Prevention and Protection Plan, 2018 – 2020 Fire Protection System Reports, P&IDs	308
6. EMERGENCY ACTION PLAN	Emergency Action Plan	78
7. JOB SAFETY HAZARD ANALYSIS	Job Safety Analysis Standard, SWP 5099 Inspect-Grease Peaker Fin Fan, SWP 5100 Unit 3 Sprint System, SWP 5109 Peaker AIG Blowers	28
8. HOT WORK PERMITS	Hot Work Permit Procedure, Hot Work Permits	13
9. CONFINED SPACE PERMITS	Combined Space Entry Standard, Permits	81
10. LOCKOUT TAGOUT PERMITS	Lockout Tagout Standard, Permits	74
11. GENERATOR STEP UP XFMR – Part 1	EDG-104 Calpine Transformer Reliability Program, Apparatus Details, 2018 GSU-01 Test Report	147

APPLICATION FOR CONFIDENTIAL DESIGNATION
Gilroy Energy Center (01-EP-08C)

Title	Description	# of Pages
GENERATOR STEP UP XFMR – Part 2	2018 GSU-02 Test Report, 2020 GSU-03 Test Report	163
12. PERSONAL PROTECTIVE EQUIPMENT	Personal Protective Equipment Standard	26
Photos	Active LOTO In The Field _LOTO-2147; Active LOTO Paperwork _LOTO-2147; Ammonia Secondary Containment; Ammonia Storage Tank; Ammonia Unloading Area; CGT Fire Panels 1, 2, and 3; Closeup Of LOTO Tag LOTO-2147; CO2 Cylinders CTG-1 Inspection Tag; CO2 Cylinders; Emergency Safety Shower – Ammonia; SWP Permit For LOTO-2147	15
SOP-4 AMMONIA UNLOADING PROCEDURE	Ammonia Unloading Procedure	11

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

The Information should be kept confidential in its entirety as it contains sensitive and confidential information regarding the Gilroy Energy Center.

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:*

(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.

(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.

First, the Public Records Act broadly exempts corporate proprietary information, including trade secrets from public disclosure. (Gov't Code §§ 6254.7(d), 6254.15.) Trade secrets include “any

APPLICATION FOR CONFIDENTIAL DESIGNATION

Gilroy Energy Center (01-EP-08C)

formula, plan, ... production data, or compilation of information ..., which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service ... and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.” (Gov’t Code §§ 6254.7(d), 6254.15.) The Information relates to the specific technologies, generating processes, and operating procedures employed at the Gilroy Energy Center, including the design and location of certain facility components and other commercially valuable information related to the facility’s operations and potential improvements, which is known only to the Applicant and used for asset operations and protection purposes. The information has independent economic value from not being generally known to the public or to the Applicant’s competitors.

In addition to concerns regarding the value of this information to competitors, the Applicant purchases equipment and retains the services of consultants and contractors to conduct work at the Gilroy Energy Center. Public disclosure of the information in the Information could place the Applicant at a pricing disadvantage if such information is public and available to potential vendors of equipment and providers of services. Thus, the Information has independent economic value from not being generally known to the public, including Applicant’s competitors and vendors, that could obtain economic value from the disclosure or use of the Information.

Second, 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 Information clearly outweighs the public interest served by disclosure as nondisclosure of the documents will protect against potential misuse of the Information for illicit purposes, such as vandalism, tampering, or other third-party imposed damages. Attacks on energy infrastructure are a real, contemporary threat, and the public interest in preventing such acts through limiting use of sensitive information relating to the Gilroy Energy Center clearly outweighs the public interest served by disclosure of the limited information for which the Applicant is seeking confidential designation.

Third, 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).) California Government Code Section 6254 (ab), in pertinent part, excludes from disclosure, “Critical infrastructure information [“CII”], as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the Office of Emergency Services for use by that office, including the identity of the person who or entity that voluntarily submitted the information.* *

*” Both the Department of Homeland Security (“DHS”) and the Federal Energy Regulatory Commission (“FERC”) have processes for this exemption. Similarly, FERC protects Critical Energy Infrastructure Information (“CEII”) through an application for protection from FOIA disclosure. The Information can 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;
- Could be useful to a person in planning an attack on critical infrastructure;

APPLICATION FOR CONFIDENTIAL DESIGNATION
Gilroy Energy Center (01-EP-08C)

- 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 Information does not simply give the general location of the critical infrastructure. The Information contains details about the production and generation of energy and specific power plant operations, which could be useful to a person planning an attack on critical infrastructure through the provision of engineering and potential vulnerability information about existing 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 Information contains details meeting 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 Information is not customarily in the public domain and is related to the security of critical infrastructure or protected systems.

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. However, the Information does not consist of the types of data or programmatic reporting that generally lends itself to the types of masking and aggregation the Applicant believes is contemplated by Section 2505(a)(E), thus making aggregation or masking infeasible in this circumstance. It may be possible to aggregate 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.

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.*

APPLICATION FOR CONFIDENTIAL DESIGNATION
Gilroy Energy Center (01-EP-08C)

The Information is accessible only to employees or consultants providing essential services to the Gilroy 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 Gilroy 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: December 6, 2021

By:

/s/

Samantha G. Neumyer
Ellison Schneider Harris & Donlan LLP

Attorneys for Applicant