

DOCKETED

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December 16, 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 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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Attorneys for Russell City Energy Company, LLC

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 prepared on behalf of the Russell City Energy Center (“RCEC”):

Title	Date	Description	# of Pages
<i>Russell City Energy Center Event Review, Slides 37 and 38 (“RCA Slides”)</i>	---	The Root Cause Analysis (“RCA”) Slides contain information regarding the root cause of the steam turbine event that occurred at the RCEC on May 27, 2021.	2

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

The Information should be kept confidential in its entirety.

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.*

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 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 and generating processes employed at the RCEC, including operating data and operational parameters for 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

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protection purposes. The information has independent economic value from not being generally known to the public or to the Applicant's competitors.

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 RCA Slides clearly outweighs the public interest served by disclosure as nondisclosure 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 RCEC clearly outweighs the public interest served by disclosure.

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/Electric Infrastructure Information ("CEII") through an application for protection from FOIA disclosure. The RCA Slides include information that meet that definition of CEII, which 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;
- 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 RCA Slides do not simply give the general location of the critical infrastructure. The RCA Slides contain specific engineering and vulnerability information relating to the production and generation of energy. This information 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 RCA Slides contain information meeting the definition of "critical infrastructure information." Title 6, section 131 of the U.S. Code defines "critical infrastructure information"

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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 RCA Slides contain information 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 in the RCA Slides. However, the RCA Slides do 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. However, where the CEC determines that the record can be redacted for public disclosure, the Applicant requests that the CEC consult with the Applicant to make this determination and consider instead potential production of substantially similar information.

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 RCA Slides are accessible only to employees or consultants providing essential services to the Russell City Energy Center. The information in the RCA Slides has been disclosed to certain agencies, such as the California Public Utilities Commission and CEC, that have regulatory oversight or other responsibilities over either the information or the RCEC.

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 16, 2021

By: 
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