

**DOCKETED**

<b>Docket Number:</b>	01-EP-08C
<b>Project Title:</b>	Calpine Gilroy Emergency Process - Compliance
<b>TN #:</b>	242217
<b>Document Title:</b>	CEC Response Letter Regarding Application for Confidentiality
<b>Description:</b>	Response to 12-6-21 application
<b>Filer:</b>	Patty Paul
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	3/7/2022 4:38:02 PM
<b>Docketed Date:</b>	3/7/2022



March 7, 2022

Samantha G. Neumyer  
Ellison Schneider Harris & Donlan LLP  
2600 Capitol Avenue, Suite 400  
Sacramento, California 95816

**APPLICATION FOR CONFIDENTIAL DESIGNATION:  
Documents Related to Staff Site Inspection of Gilroy Energy Center, Docket  
No. 01-EP-08C**

Dear Samantha Neumyer:

The California Energy Commission (CEC) has received Gilroy Energy Center, LLC's (applicant) application for confidential designation, dated December 6, 2021, covering the following documents:

- 1. COVID-19 visitor questionnaire and Pandemic Guide for Power Operations*
- 2. Safety Management Procedures: Chemical Handling and Unloading*
- 3. Spill Prevention Control and Countermeasures Plan*
- 4. Facility Risk Management Plan*
- 5. Fire Prevention and Protection Standard*
- 6. 2018-2020 Fire Protection System Reports*
- 7. Emergency Action Plan*
- 8. Job Safety Hazard Analysis*
- 9. Hot Work Procedure and Permits*
- 10. Confined Space Entry Procedures and Permits*
- 11. Lock-out-tag-out Standard and Permits*
- 12. Generator Step-up and Transformer Reliability Program*
- 13. Personal Protective Equipment Standard*
- 14. Ammonia Unloading Procedures*
- 15. Photos of ammonia containment, tanks, fire panels, emergency safety showers, active lock-out-tag-out paperwork, and other facility photos*

The application states that these documents should be kept confidential for the operating life of the facility, and that aggregation or masking the information is infeasible although some portions may be aggregated or redacted in consultation with the applicant.

The application identifies three reasons for confidentiality: trade secrets/business proprietary information under Government Code sections 6254(k) and 6254.15; Government Code section 6255, known as the “balancing test;” and critical energy infrastructure information (CEII) and critical infrastructure information (CII) under Government Code section 6254(ab).

An application for confidential designation 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.” 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.

## **Confidentiality Claims**

### Trade Secrets/Business Proprietary Information

The California Public Records Act allows for the non-disclosure of corporate financial records, corporate proprietary information, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California. (Gov. Code section 6254.15.) As a preliminary matter, because the information is not being provided “for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility” in California, and is for investigation and compliance purposes with permitting, section 6254.15 does not apply.

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

The application states the documents relate 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 application notes the information has independent economic value from not being generally known to the public or to the applicant's competitors.

In addition, the application states applicant purchases equipment and retains the services of consultants and contractors to conduct work at the Gilroy Energy Center. The application notes that public disclosure of 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. The application concludes that the documents have 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 contained in the documents.

#### Public Interest in Disclosure Section 6255(a)

Government Code section 6255(a) allows an agency to withhold records from public disclosure where on the facts of the 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 application asserts that the public interest served by not disclosing the documents clearly outweighs the public interest served by disclosure as nondisclosure of the documents will protect against potential misuse of the document's content for illicit purposes, such as vandalism, tampering, or other third-party imposed damages. The application alleges 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.

The balancing test can be used to support non-disclosure of information related to public safety. However, mere claims of potential mischief are insufficient and actual facts demonstrating that specific harm is likely to result to the public or specific individuals is 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 [221 Cal.Rptr.3d 832, 843, 400 P.3d 432, 441].)

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 [89 Cal.Rptr.3d 374, 395], as modified (Feb. 27, 2009).)

#### Critical Energy Infrastructure Information

Finally, the application states the Public Records Act protects from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law." (Gov. Code § 6254(k).) The application identifies Government Code Section 6254(ab), which protects CII and CEII from disclosure.

Government Code section 6254(ab) sets forth protection from public disclosure of certain infrastructure information provided the following are met: (1) the information is critical infrastructure, as defined in United States Code (U.S.C.), title 6, section 131(3), and (2) the information is voluntarily submitted to the Office of Emergency Services. Importantly, section 6254(ab) expressly states that, this subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

The Department of Homeland Security (DHS) and the Federal Energy Regulatory Commission (FERC) have processes in place to designate information as protected CEII, but the same limitations found in Government Code section 6254(ab) apply: the information must be voluntarily submitted to the federal agency for designation and the designation does not cover data independently obtained by a state agency. The salient provision of federal law states in part, "nothing in this section shall be construed to limit or otherwise affect the ability of a State...agency... to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such

information in any manner permitted by law.” (See 6 U.S.C. section 673 and 18 CFR section 388.113)

The application notes that the documents at issue do not simply give the general location of the critical infrastructure but 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)). The application also notes the documents are not customarily in the public domain and are related to the security of critical infrastructure or protected systems. However, the application does not indicate that any of the documents have been submitted to DHS or FERC for designation as CEII or CII, or that they have been so designated. We assume, therefore, that the documents are not designated as CEII or CII. Nonetheless, applicant’s assertion of CEII and CII may support a claim that the documents should be withheld under the balancing test in Government Code section 6255(a).

## **Review of Documents**

Each of the documents submitted with the application is reviewed under the claims asserted above.

### *1. COVID-19 visitor questionnaire and Pandemic Guide for Power Operations*

The COVID-19 questionnaire does not appear to contain any information that can be considered a trade secret. The questions on the form reflect standard COVID-19 screening questions as one might be asked in a variety of settings. The application does not demonstrate how the questionnaire contains a compilation of information that provides the applicant any type of business advantage. The questionnaire also does not relate to specific technologies, generating processes, or any power plant operational data. Therefore, the applicant has not made a reasonable claim that the COVID-19 questionnaire is a trade secret.

Moreover, the COVID-19 questionnaire is not facility specific and there is no information evidencing how the questionnaire could be used to harm the facility. The consequences set forth in the application regarding vandalism and tampering, do not appear to be a possibility from disclosure of the form. The application does not show how the COVID-19 questionnaire meets any state or federal definition of critical infrastructure or otherwise shows vulnerabilities of a facility. In contrast, there is some public interest in

knowing how the applicant is screening visitors for COVID-19 to protect workers. Therefore, the applicant has not made a reasonable claim that the public interest served by not disclosing the COVID-19 questionnaire clearly outweighs the public interest served by disclosure.

The Pandemic Guide contains general protocols for operating facilities during the pandemic based on guidelines from public health departments and OSHA. Issues of COVID-19 testing, facility cleaning, access by visitors, use of protective gear, and other topics are covered. As with the COVID-19 questionnaire, the Pandemic Guide does not contain compilations of data, sensitive energy market information, or other operational data that could be considered a trade secret. Therefore, the applicant has not made a reasonable claim that the document should be withheld as a trade secret.

The Pandemic Guide is not facility specific and there is no information evidencing how the Pandemic Guide could be used to harm the facility. The consequences set forth in the application regarding vandalism and tampering do not appear to be a possibility from disclosure of the Pandemic Guide. The application does not show how the Pandemic Guide meets any state or federal definition of critical infrastructure or otherwise shows vulnerabilities of a facility. In contrast, there is some public interest in knowing how the applicant is protecting workers during the pandemic. Therefore, the applicant has not made a reasonable claim that the public interest served by not disclosing the Pandemic Guide clearly outweighs the public interest served by disclosure.

## *2. Safety Management Procedures: Chemical Handling and Unloading*

The Chemical Handling and Unloading document sets forth various procedures and safety protocols for handling and receiving bulk chemicals. These general procedures are based on federal and state requirements, and are not specific to the facility. The documents do not contain compilations of data, sensitive energy market information, or other operational data that could be considered a trade secret. Therefore, applicant has not made a reasonable claim that the Chemical Handling and Unloading document contains trade secrets.

However, the Chemical Handling and Unloading document contains sufficient details that would enhance one's ability to strategically damage the facility by understanding the chemical handling process. Here, there are sufficient facts demonstrating that specific harm is likely to result to the public from the disclosure of the document. As such, applicant has made a reasonable claim that the public interest in ensuring that details regarding the process of handling bulk chemical deliveries do not fall into the wrong hands clearly outweighs the public interest in knowing the specific bulk chemical protocols.

### *3. Spill Prevention Control and Countermeasures Plan*

The Spill Prevention Control and Countermeasure Plan (SPCCP) provides for how the facility prevent and control petroleum spills from leaving the project site. The SPCCP contains information required under 40 C.F.R. 112. Thus, the SPCCP contains standardized information on both engineering and procedural methods to prevent and control oil spills. Other information in the SPCCP appears to be the same public information contained in the Final Staff Assessment and CEC certification. This includes descriptions of the facility, lists of equipment, and line diagrams of the facility. Finally, some of the data contained in the SPCCP includes weather data posted on the NOAA website. The applicant does not demonstrate how the SPCCP, and its identification of standard industrial best management practices contains a compilation of information that provides the applicant any type of trade secret business advantage. The SPCCP does not contain any power plant operational data, specific technologies or generating processes. Therefore, application does not make a reasonable claim that the SPCCP contains trade secrets.

For similar reasons, the application also does not show how the information contained in the SPCCP can be used to harm the facility. The consequences set forth in the application regarding vandalism and tampering, do not appear to be a possibility from disclosure of the SPCCP. In contrast, there is some public interest to know how the facility will protect offsite habitat from facility oil spills. Therefore, the applicant has not made a reasonable claim that the public interest served by not disclosing the SPCCP clearly outweighs the public interest served by disclosure.

### *4. Facility Risk Management Plan*

The Facility Risk Management Plan contains detailed information related to the facilities handling and storage of ammonia-containing products used in the emission control systems. The plan contains detailed diagrams of equipment and analysis of impacts if equipment fails.

The applicant does not demonstrate how the plan contains a compilation of information that provides the applicant any type of trade secret business advantage. The plan does not contain any power plant operational data, specific technologies, or generating processes. Therefore, the application does not make a reasonable claim that the plan contains trade secrets.

However, knowledge of the Facility Risk Management Plan would enhance one's ability to strategically damage the facility by understanding the safety containment protocols around the use and storage of ammonia. Here, there are sufficient facts demonstrating that specific harm is likely to result to the public from disclosure of the information.

Therefore, applicant has made a reasonable claim that the public interest in ensuring that details contained in the Risk Management Plan do not fall into the wrong hands clearly outweighs the public interest in knowing the specific facility protocols.

#### *5. Fire Prevention and Protection Standard*

The Fire Prevention and Protection Standard is a general companywide document not specific to the Gilroy facility. The contents of the document appear to be general in nature, containing broad fire prevention information such as only smoking in designed areas, the types of fires that can occur, the required inspections periods, record retention periods, and citations to relevant OSHA requirements. The applicant does not demonstrate how the Fire Prevention and Protection Standard and its identification of standard industrial best management practices related to fire prevention contains a compilation of information that provides the applicant any type of trade secret business advantage. The document does not contain any power plant operational data, specific technologies or generating processes and is not specific to the operations of the Gilroy facility. Therefore, the applicant has not made a reasonable claim that the document is a trade secret.

Moreover, it does not appear how the non-facility specific document can be used to harm the facility and that the public interest served by not disclosing the document clearly outweighs the public interest served by disclosure. Because the Fire Prevention and Protection Standard is not facility specific, there is no detailed information that could show vulnerabilities; thus, the application does not make a reasonable claim required to support a designation of CEII. In contrast, there is some public interest in knowing that facility staff have some level of fire prevention training. Therefore, applicant has not made a reasonable claim that the public interest served by not disclosing the document clearly outweighs the public interest served by disclosure.

Appendix C4 to the Fire Prevention and Protection Standard is facility specific, containing the OSHA Fire Prevention Plan specific to both the Gilroy Co-Gen and Gilroy Energy Center facilities. However, as with the Fire Prevention and Protection Standard, the contents of Appendix C4 are general in nature with information that is similar to information provided in the certification documents or are otherwise already publicly known, for example, the facility contains natural gas. For the same reasons as the detailed for the Fire Prevention and Protection Standard, the applicant has not made a reasonable claim that Appendix C4 contains trade secrets or that the public interest served by not disclosing the document clearly outweighs the public interest served by disclosure.

### *6. 2018-2020 Fire Protection System Reports*

These documents contain approximately 260 pages of test reports reflecting the periodic testing of various fire protection systems at the facility in compliance with the fire code. The reports mostly show passing inspections, and the reports contain no information regarding inspection or repair costs. The facility is subject to regular inspection of its fire protection systems as set forth in the conditions of certification and the Fire Code. The applicant has failed to explain how independent economic value is derived from keeping details about the fire protection system inspections from being made public. The inspection reports are two to three years old and contain only brief summaries of the equipment being inspected. Therefore, applicant has not made a reasonable claim that these reports are trade secrets.

Moreover, the reports contain only limited details about the facility. Even if a system or component of a system failed at the time of inspection, such information would not necessarily reflect the current state of the system. As explained above, mere claims of potential mischief are insufficient and facts demonstrating that specific harm is likely to result to the public or specific individuals is required to justify withholding information. In contrast, the public has an interest in ensuring that the facility is complying with applicable laws and requirements. Therefore, applicant has not made a reasonable claim that the public interest served by nondisclosure clearly outweighs the public interest in disclosure.

### *7. Emergency Action Plan*

The Emergency Action Plan contains 78 pages of detailed facility specific information on the process for dealing with various types of emergencies at the Gilroy facility. The plan is drafted to meet the requirements of various laws and regulations including National Electric Reliability Council requirements. Given the detailed nature of the plan and the topics covered, the applicant has made a reasonable claim that the Emergency Action Plan contains trade secrets that may provide a competitive advantage on how the facility handles emergencies or such information could impact the ability to contract with vendors and contractors.

In addition, public knowledge of the procedures described in the plan could be used to increase the effectiveness of an attack on the facility. This is especially so given knowledge of how plant staff will respond to a situation could allow for counter action. In contrast, the public only has a generalized interest in this documentation. Therefore, applicant has also made a reasonable claim that the public interest served by not disclosing the document clearly outweighs the public interest served by disclosure of this detailed Emergency Action Plan.

### *8. Job Safety Hazard Analysis*

This document contains the companywide process for assessing how various tasks at a facility are assessed and categorized to determine the appropriate safety protocols for the task. The Job Safety Analysis is not facility specific and does not contain generation data or sensitive energy market information that would suggest a possible competitive advantage from its secrecy. Therefore, applicant has not made a reasonable claim that this document contains trade secrets.

In addition. The document does not contain information that could result in the vandalism of a facility or CEII relating to the vulnerabilities of a specific generating facility. In contrast, the public's interest in disclosure is a generalized interest in power plant operation. While these records are not customarily in the public domain, on balance, the applicant has not made a reasonable claim that the public's interest in the non-disclosure of this document clearly outweighs the public's interest in the disclosure of this document.

### *9. Hot Work Procedure and Permits*

The Hot Work Procedures set forth the process for ensuring welding and other work that could generate sparks will not cause a fire while the filled-out permits evidence implementation of the procedures. The Hot Work Procedures are general to all the applicant's facilities and appear to contain general best management practices and protocols set out in 29 CFR 1910.252 - *Welding, Cutting, and Brazing and NFPA 51B-Standard for Fire Prevention during Welding, Cutting, and Other Hot Work, 2019*. These procedures, which reflect general industrial best practices and are informed by the requirements of state and federal law. The Hot Work Procedures and filled permit forms do not detail the categories of information the application identified as trade secrets such as 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 applicant also has not shown how public disclosure of the Hot Work Procedures or filled out permit forms could place the applicant at a pricing disadvantage if such information is public and available to potential vendors of equipment and providers of services since the procedures are industrial best management and all vendors in similar facilities would be subject to similar requirements. The completed permit forms contain very general descriptions, such as welding and grinding, of work performed one to two years ago at the facility. Therefore, applicant has not made a reasonable claim that the procedures are a trade secret.

Moreover, the procedures do not reflect a specific site and do not provide detailed information about the Gilroy site in a way that suggests CEII. The concern of facility vandalism does not seem justified. As explained above, mere claims of potential mischief are insufficient and facts demonstrating that specific harm is likely to result to the public or specific individuals is required to justify withholding information. There is some public interest to know how the facility prevents fires and protects the community. Therefore, applicant has not made a reasonable claim that the public's interest in nondisclosure of these documents clearly outweighs the public's interest in disclosure.

#### *10. Confined Space Entry Procedures and Permits*

The Confined Space Entry Procedures set for the companywide safety procedures for performing work in confined spaces. The Confined Space Procedures are not facility specific except for an appendix that contains a list of components at the Gilroy Energy Center that are considered confined space. The Permits reflect filled out forms covering confined space work at the facility. The Confined Space Procedures are based on OSHA 29 CFR 1910.146, *Permit-Required Confined Spaces*.

These procedures and permits, which reflect general industrial best practices and are informed by the requirements of state and federal law, do not detail 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. In addition, the completed permits are one to two years old. The applicant also has not shown how public disclosure of the Confined Space Procedures and permits could place the applicant at a pricing disadvantage if such information is public and available to potential vendors of equipment and providers of services since the procedures are industrial best management and all vendors in similar facilities would be subject to similar requirements. Therefore, applicant has not made a reasonable claim that the procedures and permits are trade secrets.

The Confined Space Procedures and permits are of a general nature, and do not reflect a specific site and do not provide detailed information about the Gilroy site. As a result, the concern of facility vandalism does not seem justified. As explained above, mere claims of potential mischief are insufficient and facts demonstrating that specific harm is likely to result to the public or specific individuals is required to justify withholding information. The lack of specific facility engineering details preclude an assertion of CEII. Therefore, the applicant has not made a reasonable claim that the public's interest in nondisclosure of these documents clearly outweighs the public's interest in disclosure.

### *11. Lock-out-tag-out Standard and Permits*

The Lock-out-tag-out (LOTO) Standard sets forth the companywide protocols to ensure that systems being worked on do not become energized or otherwise operational and risking the safety of workers. The LOTO Standard cites to the requirements of OSHA 29 CFR 1910.147 and OSHA Instruction CPL 02-00-147, *The Control of Hazardous Energy Enforcement Policy and Inspection Procedures*. In general, LOTO protocols are industry wide best practices and implemented at all industrial facilities.

The LOTO Standard and permits do not detail 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 applicant also has not shown how public disclosure of the LOTO Standard, and permits could place the applicant at a pricing disadvantage if such information is public and available to potential vendors of equipment and providers of services since the procedures are industrial best management and all vendors in similar facilities would be subject to similar requirements. In additions the filled-out permits are over a year old. Therefore, the applicant has not made a reasonable claim that the LOTO Standard and filled out permits meet the definition of a trade secret.

Since the LOTO Standard does not reflect a specific site and does not provide detailed information about the Gilroy site, the concern of facility vandalism does not seem justified. As explained above, mere claims of potential mischief are insufficient and facts demonstrating that specific harm is likely to result to the public or specific individuals is required to justify withholding information. The lack of specific facility engineering details prevent this from meeting the definition of CEII. In contrast, the public has an interest in ensuring the safe operation of the power plant. Given the general nature of the LOTO Standard and permits, the applicant has not made a reasonable claim that the public's interest in nondisclosure of the documents clearly outweighs the public's interest in disclosure.

### *12. Generator Step-up and Transformer Reliability Program parts 1 and 2 with test reports*

This document describes the tests, diagnostic procedures and measurements related to the operations of liquid filled transformers and includes detailed test reports from the Gilroy Energy Center of transformer equipment. Given the detailed information contained in the procedures and the facility-specific information about the equipment on site, the applicant has made a reasonable claim that the Reliability Program and test

reports contain trade secrets that may provide a competitive advantage on how the facility operates.

In addition, public knowledge of the transformer and related equipment specifications described in the Reliability Program documents could be used to increase the effectiveness of an attack on the facility. This is especially so given knowledge of specific facility equipment specification and performance results. Thus, the public interest served by not disclosing the document clearly outweighs the public interest served by disclosure of the Reliability Program and related test reports.

### *13. Personal Protective Equipment Standard*

The Personal Protective Equipment Standard (PPE) describes the company wide requirements for using protective equipment when performing work. Information in the standard appears to be based general best management safety practices for industrial facilities based on 29 Code of Federal Regulations (CFR) 1910 Subpart I – *Personal Protective Equipment* 1910.132 - 1910.138; ANSI Z41-1991, *American National Standard for Personal Protection – Protective Footwear*; ANSI Z89.1-1986, *American National Standard for Personnel Protection – Protective Headwear for Industrial Workers-Requirements*; and ANSI Z87.1-1989, *American National Standard Practice for Occupational and Educational Eye and Face Protection*.

The PPE Standard does not detail 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 applicant also has not shown how public disclosure of the PPE Standard could place the applicant at a pricing disadvantage if such information is public and available to potential vendors of equipment and providers of services since the procedures are industrial best management and all vendors in similar facilities would be subject to similar requirements. Therefore, the applicant has not made a reasonable claim that the PPE Standard meets the definition of a trade secret.

Since the PPE Standard does not reflect a specific site and does not provide detailed information about the Gilroy site, the concern of facility vandalism does not seem justified. As noted above, mere claims of potential mischief are insufficient and facts demonstrating that specific harm is likely to result to the public or specific individuals is required to justify withholding information. The PPE standard does not contain the types of engineering details that would meet the definition of CEII. In contrast, the public has an interest in ensuring worker safety at the facility. Given the general nature of the PPE Standard the applicant has not made a reasonable claim that the public's

interest in nondisclosure of the PPE Standard clearly outweighs the public's interest in disclosure.

#### *14. Ammonia Unloading Procedures*

The Ammonia Unloading Procedures sets forth the process for safe unloading of aqueous ammonia at the Gilroy Energy Center. For similar reasons as set forth in the discussion on the bulk chemical handling procedures, the applicant has not made a reasonable claim that the Ammonia Unloading Procedures contain trade secrets or CEII.

However, the Ammonia Procedures contain sufficient details the knowledge of which would enhance one's ability to strategically damage the facility by understanding the ammonia handling process. Here, there are sufficient facts demonstrating that specific harm is likely to result to the public. As such, the public interest in ensuring that details regarding the process of handling ammonia deliveries do not fall into the wrong hands clearly outweighs the public interest in knowing the specific ammonia handling protocols.

#### *15. Photos of ammonia containment, tanks, fire panels, emergency safety showers, active lock-out-tag-out paperwork, and other facility photos*

The photos show facility equipment and related systems and active LOTO permits. Given the detailed information contained in the photos showing operating equipment on site, and that the site is not accessible to the public, the applicant has made a reasonable claim that the photos may show trade secrets that may provide a competitive advantage on how the facility operates.

In addition, public knowledge of the detailed information shown in the photos could be used to increase the effectiveness of an attack on the facility. This is especially so given the pictures show the ammonia tanks and containment and fire panels. The facility is not open to the public, so the information in these photos is not customarily in the public domain. Thus, the public interest served by not disclosing the photos clearly outweighs the public interest served by disclosure of the photos.

As noted in the LOTO section, the filled-out permits are not confidential so photos of these permits would also not be confidential.

### **Executive Director's Determination**

For the reasons detailed above, the request for confidential designation for the following documents is granted for the life of the facility:

- 2. Safety Management Procedures: Chemical Handling and Unloading*
- 4. Facility Risk Management Plan*
- 7. Emergency Action Plan*
- 12. Generator Step-up and Transformer Reliability Program*
- 14. Ammonia Unloading Procedures*
- 15. Photos of ammonia containment, tanks, fire panels, emergency safety showers, and other facility photos*

As the applicant has indicated, aggregation is not generally possible given the nature of these documents with narrative information or technical data. However, aggregation or redaction may be possible for some of the information.

The following records, which do not contain detailed information about the design and operation of the Gilroy facility, do not contain generation data or sensitive energy market information, and do not contain information that could result in vandalism of a facility or critical energy infrastructure information relating to vulnerabilities of a specific generating facility, are denied confidential designation:

- 1. COVID-19 visitor questionnaire and Pandemic Guide for Power Operations*
- 3. Spill Prevention Control and Countermeasures Plan*
- 5. Fire Prevention and Protection Standard*
- 6. 2018-2020 Fire Protection System Reports*
- 8. Job Safety Hazard Analysis*
- 9. Hot Work Procedure and Permits*
- 10. Confined Space Entry Procedures and Permits*
- 11. Lock-out-tag-out Standard and Permits*
- 13. Personal Protective Equipment Standard*
- 15. Photos of active lock-out-tag-out paperwork*

The applicant may provide additional or supplemental information to support confidential designation of these records. The applicant shall submit any such information through the docket within 14 days of the date of this letter. Otherwise, the documents may be disclosed as public records.

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 records is issued by the CEC's Chief Counsel. Under Title 20, California Code of Regulations, section 2507, 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 for acting on a

Samantha Neumyer

March 7, 2022

Page 16

petition and criteria for disclosing or releasing records previously designated as confidential are set forth in California Code of Regulations, title 20, sections 2506-2507.

You may seek a confidential designation for information that is substantially similar 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 Jared Babula, senior attorney, at [jared.babula@energy.ca.gov](mailto:jared.babula@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