

**DOCKETED**

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**VIA EMAIL**

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Supplemental Application for Confidential Designation:  
Russell City Energy Center Compliance Documents (01-AFC-07C)

Dear Samantha Neumyer:

The California Energy Commission (CEC) has received Russell City Energy Company, LLC's (applicant) supplemental application for confidential designation, dated March 11, 2022. The application covers the following documents (site inspection documents) related to the Russell City Energy Center (RCEC):

1. Pandemic Guidance Document Power Plant Operating Teams
2. Spill Prevention Control and Countermeasure Plan
3. Fire Protection Plan and Testing and Inspection Reports
4. Job Safety Hazard Analysis
5. Hot Work Permit Procedures and Hot Work Permits
6. Confined Space Entry Standards and Confined Space Permits
7. Lock Out Tag Out (LOTO) Standard and LOTO Authorization Forms
8. Personal Protective Equipment Standard.<sup>1</sup>

The application states that the records should be kept confidential for the operating life of RCEC and that aggregation of the information may be possible in discussion with the applicant. The applicant states that the site inspection documents are accessible only to employees or consultants providing essential services to RCEC. The site inspection documents have 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 RCEC.

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<sup>1</sup> The application also requests that generator step up maintenance documents be designated as confidential, but staff has confirmed that no such documents were submitted by RCEC. Therefore, no determination can be made for this category.

The applicant asserts the following primary bases for confidential designation: (1) trade secret and proprietary information under Government Code sections 6254(k), 6254.7(d), and 6254.15, and California Civil Code section 3426.1(d); (2) plant production data relating to utility systems development under Government Code section 6254(e); (3) personnel information under Government Code section 6254(c); (4) public interest in disclosure also known as the public interest "balancing test" under Government Code section 6255; and (5) copyright.

An application for confidential designation shall be granted under the 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's 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 California Public Records Act and other applicable laws.

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

The following records, which include detailed information about the design and operation of the RCEC, are granted confidential designation for the life of the facility or until such time as they may be publicly released:

1. Spill Prevention Control and Countermeasure Plan
2. Fire Protection Plan
3. Job Safety Hazard Analysis Standard with RCEC Safe Work Permits
4. Hot Work Permit Procedures with Hot Work Permits
5. Confined Space Entry Standard with Confined Space Permits
6. Lock Out Tag Out Standard with LOTO Authorization Permits
7. Information containing RCEC employee internal email addresses or non-public facility phone numbers.

For the reasons stated in Attachment A, the following records are granted a partial confidential designation for the life of the facility or until such time as they may be publicly released:

1. Pandemic Guidance Document
2. Fire System Testing and Inspection Reports.

For the reasons stated in Attachment A, the following records are not granted confidential designation and may be publicly released:

1. Personal Protective Equipment Standard.

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 confidential records is issued by the CEC's chief counsel. Under California Code of Regulations, title 20, section 2507, the executive director may disclose records, or release records previously designated as confidential, in certain circumstances. The procedures for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set forth in the California Code of Regulations, title 20, sections 2506-2508.

You may request that the CEC determine the confidentiality of records that the executive director denied confidential designation. You have 14 days to request that the CEC determine the confidentiality of the record. If you make such a request, the CEC will conduct a proceeding pursuant to the provisions in California Code of Regulations, title 20, section 2508.

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

Sincerely,



Drew Bohan  
Executive Director

## **Attachment A**

### Pandemic Guidance Document Power Plant Operating Teams

The applicant has not made a reasonable claim that the portions of the documents that consist of public health bulletins issued by OSHA, the CDC or other governmental agencies or general non-facility-specific procedures for general facility cleaning or use of protective gear are exempt from disclosure. These documents are not facility-specific, do not contain generation data or sensitive energy market information, and do not contain information that could result in the vandalism of a facility. These documents are also not trade secrets as they contain general best practices developed and published by public health agencies. Therefore, it is not reasonable to infer the information has independent economic value for the applicant or that the information is not already generally known to the public.

### Fire System Testing and Inspection Reports

The applicant has made a reasonable claim that the inspection and testing reports are exempt from disclosure under the balancing test of Government Code section 6255. Like all industrial facilities, RCEC is subject to regular inspection of its fire protection systems, as set forth in the conditions of certification and the fire code. The inspection reports contain detailed information regarding the fire protection equipment model and serial number, the nameplate and actual performance measures, equipment age, equipment and system locations within the plant, the time delay to activation data, and other system and equipment information.

The Russell City facility is located centrally in the City of Hayward and these records contain details about the fire protection system that could be useful to a person planning an attack on RCEC through the provision of engineering and potential vulnerability information. While the public has some interest in these documents, on balance the public's interest in ensuring that details in these documents do not fall into the wrong hands clearly outweighs the public interest in understanding the precise equipment information contained in these inspection reports.

The applicant has not made a reasonable claim that the results of tests and inspections contained in the reports are confidential. The reports are dated 2018-2021 and thus the fact that an inspection identified a failing component does not necessarily reflect the state of the facility or a vulnerability. The public does have

a strong interest in knowing the general state of the fire protection systems at the facility and if equipment typically passes required inspections. Therefore, while the detailed specifications of the fire system equipment are confidential, the results of inspections are not.

#### Personal Protective Equipment Standard

This document consists of a 30-page Personal Protective Equipment (PPE) Standard describing the companywide requirements for using protective equipment when performing work. The applicant states the PPE standard was created directly by the applicant or on the applicant's behalf and that the PPE standard has economic value to the applicant because it relates directly to the operation of the RCEC. The applicant notes it has invested substantial time and resources in the creation of the PPE standard, which was developed specifically to meet OSHA Standards. The applicant states the PPE standard is not publicly available and disclosure would cause a loss of competitive advantage as it would enable competitors to freely access the applicant's operating procedures, equipment, maintenance, and testing procedures, and would allow competitors to adjust their operating practices in a manner that disadvantages the applicant.

Information in the PPE standard implements general best management safety practices for industrial facilities based on 29 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 standard also contains generally known product performance characteristics for widely available PPE such as which types of gloves protect against which categories of chemicals. In addition, the PPE standard is not facility-specific and does not contain generation data or sensitive energy market information.

For the PPE standard, the applicant has not made a reasonable claim that the documents are exempt from disclosure as trade secrets. The PPE standard appears to be a compilation of product information and references to national standards and does not reflect information or a process providing independent economic value to the applicant since most of the information in the PPE standard reflects industry best practices and general product information.