

**DOCKETED**

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August 10, 2022

**VIA EMAIL**

Jeffery Harris  
Ellison Schneider Harris & Donlan LLP  
2600 Capitol Avenue, Suite 400  
Sacramento, California 95816  
[jdheslawfirm.com](mailto:jdheslawfirm.com)

**Supplemental Repeated Application for Confidential Designation:  
Attachment A to the Investigation Report Calpine Russell City Steam  
Turbine/Generator Event May 27, 2021, and Bay Valve Report  
Russell City Energy Center (01-AFC-07C)**

Dear Jeffery Harris:

The California Energy Commission (CEC) has received Russell City Energy Company, LLC's (RCEC/applicant) repeated application for confidential designation, dated July 5, 2022. The application covers:

1. Attachment A photos to the Investigation Report
2. Bay Valve Report Photos (except those on pages 46, 47, and 49)

The applicant asserts the photos contain both information that should not be disclosed under the public interest exemption because the information in the photos can compromise site security, as well as trade secret and proprietary information, which is not made public by the applicant.

A properly filed Application for Confidentiality 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 [California Energy] Commission to keep the record confidential."

In this case, the applicant states the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records. (Govt. Code, § 6255(a).) Specifically, the applicant notes nondisclosure will

protect against potential misuse of the information for illicit purposes, such as potential vandalism, tampering, or other third-party imposed damages facilitated by insights gleaned from vulnerabilities that can be deduced from close-up photographs and other detailed information such as nameplate and equipment performance information.

The applicant also asserts that the photographs and other information, created during the evaluation or audit and produced for or created during the investigation, could be used to pinpoint potential vulnerabilities shown in the close-up views. The applicant states that some of the photographs provide specific locational information about where critical facility components are located, or how such equipment might be exploited. The applicant also states that other photographs depict the location of fire system piping in relation to critical plant components.

Specific to the Bay Valve Report photographs, the applicant states the photos do not just depict "a single dismantled valve," but in some cases contain identifying information that has been previously granted confidential designation by the CEC. The applicant asserts that in all cases, the photographs show the parts, systems, and vantage points into vulnerabilities of disassembled critical components that cannot otherwise be gained by merely viewing the components.

The CEC previously granted confidentiality for specific photos that include sufficient design or structural information of the facility that could potentially evidence vulnerabilities or points of attack. The applicant has not made a reasonable claim that the public interest in not disclosing the remaining photos consisting of closeup pictures of damaged equipment or equipment related to the overspin event clearly outweighs the public interest in being able to view such photos and understand the events that transpired at the RCEC resulting in a fire and offsite impacts.

While the applicant has identified foreign cyberattacks and domestic sabotage of powerplants and related infrastructure, mere claims of potential mischief are insufficient, and facts demonstrating that specific harm is likely to result to the public or specific individuals are 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 non-disclosure 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).)

The threats identified in the application may be legitimate, but it seems highly improbably that pictures of a valve in isolation, which resembles pictures of valves posted on the manufacturer's website, or close-up photos of damaged turbine parts or housing would be a factor in a cyber or physical attack. This is especially so since the facility is secure and not subject to public access creating a barrier to entry.

The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.)

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, § 3426.1(d); *See also* Gov. Code, §§ 6254(k), 6276, 6276.44; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

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 the applicant, and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application addresses each of these four requirements as follows:

*The specific nature of the advantage* – The applicant has invested significant resources in the design, construction, and maintenance of the RCEC. The applicant derives independent economic value from the information not being generally known to either the public or to competitors. The specific equipment and facility configuration affect the maintenance and operational costs of the facility, which in turn directly correlates to economic value for the applicant.

*How the advantage would be lost* – Disclosure may enable competitors to “reverse engineer” potential capital, operation and maintenance costs for the applicant and use this information to fashion a competitive advantage.

*The value of the information to the applicant* – The applicant’s competitors would have access to specific details regarding the design, equipment, plant layout, and generating processes employed at RCEC, in addition to the status and condition of facility equipment visible from the photographs. Competitors can obtain economic value from the disclosure of the information as competitors would have access to information that can be used to ascertain facility operational and maintenance needs, which in turn affects operational and maintenance costs.

*The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The pictures and corresponding descriptions of plant equipment are kept confidential by the applicant as is the industry standard. In addition, the photos and descriptions that depict the design, inner workings, and components of facility equipment, are typically considered to be proprietary information of the original equipment manufacturer. For example, the manuals for this equipment that similarly explain and depict the design, inner workings, and components of facility equipment cannot be disclosed by the applicant without the consent of the original equipment manufacturer. Thus, these documents are not publicly available.

The applicant has not made a reasonable claim that the Appendix A and Bay Valve Report photos are confidential as trade secrets. While the applicant has made a general claim that the specific design and maintenance program of its

facility may be a trade secret and proprietary information, the photos at issue do not reflect design or maintenance secrets. The fact that the facility has a turbine with related components and deploys valves as part of operations is already in the public domain. In addition, it is common knowledge how valves function and, specifically, the Adams website, details specific design features of its valves and which models of valves are appropriate for fossil-fueled powerplants to protect the turbine from water intrusion. In addition, pictures of a valve and turbine with damaged internal components presumably do not reflect what is currently at the facility.

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

For the reasons stated, the Appendix A photos not previously designated as confidential, and the Bay Valve Report photos are denied confidentiality.

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.

If you have procedural 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