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DEPARTMENT OF WATER RESOURCES

DIVISION OF SAFETY OF DAMS
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SACRAMENTO, CA 95833-3500



September 16, 2025

Reneé Webster-Hawkins, Hearing Officer
California Energy Commission

Re: Applicant's Opening Brief Willow Rock Energy Storage Center

Dear Ms. Webster-Hawkins:

The Department of Water Resources, Division of Safety of Dams (DWR-DSOD) respectfully submits this comment letter on the "Applicant's Opening Brief Willow Rock Energy Storage Center" for the California Energy Commission's (CEC) consideration. As set forth below, DWR-DSOD reiterates some of the comments made at the August 21, 2025, public hearing regarding California's Dam Safety Program, and provides comments specific to the hydostatically compensating reservoir (dam) portion of applicant's opening brief.

California's Dam Safety Program

Since August 14, 1929, the State of California has regulated dams to prevent failure, safeguard life, and protect property. California's Dam Safety Program is set forth in Division 3, Part 1 of the Water Code and Division 2, Chapter 1 of Title 23 of the California Code of Regulations (collectively referred to as "Dam Safety Program Requirements"). The Water Code entrusts dam safety regulatory power to DWR-DSOD. DWR-DSOD provides oversight to the design, construction, and maintenance of over 1,200 jurisdictional sized dams in California.

The Dam Safety Program Requirements detail the administrative and legal requirements and incorporate DWR-DSOD's dam safety expertise to regulate the technical aspects of dam safety in recognition that every dam and dam site requires an individualized assessment.

DWR-DSOD ensures dam safety through the Dam Safety Program Requirements by reviewing and approving new dam construction, dam enlargements, repairs, alterations, and removals to ensure that dams and their appurtenant structures are designed and constructed to meet minimum requirements. This independent review serves as a verification of the owner's design, which adds a type of dual confirmation that a proposed dam is safe. This is based on the need to protect life and property. For new dams, this is an iterative process that includes:

- performing geologic site-specific studies and seismic characterizations;
- determining design criteria and alternatives;

Reneé Webster-Hawkins

September 16, 2025

Page 2

- independently analyzing and modeling of all components of a dam including the barrier, spillways, and outlets to understand dam and appurtenant structures performance;
- reviewing technical reports, plans, and specifications and independently performing structural, hydrologic, hydraulic, and geotechnical evaluations;
- reviewing and approving dam breach inundation maps that are to be used in developing emergency action plans; and overseeing construction to ensure work is being done in accordance with the approved plans and specifications.

Following the construction of a new dam, DSOD conducts:

- annual inspections to ensure the dam and its appurtenances are performing as intended, being properly maintained, and are safe for continued operation;
- periodic reviews of the dam and its appurtenances in light of improved design approaches and requirements, as well as new findings regarding earthquake hazards and hydrologic estimates in California; and
- reviews of updated dam breach inundation maps prepared and submitted by the dam owner at least every ten years as required by the Water Code.

As summarized above, the Dam Safety Program Requirements are essential to ensure that dams and reservoirs in California are designed, constructed, operated, and maintained for the protection of life and property. DWR-DSOD has the expertise to ensure conformance with these requirements.

Applicant's Legal Briefing

DWR-DSOD provides the following comments specific to the applicant's legal briefing. DWR-DSOD recommends that the CEC reject the applicant's requests, and that the CEC retain Water Conditions 5 and 6, as proposed in the Final Staff Assessment.

As detailed below, the applicant's requests are not legally supported. Water Conditions 5 and 6 are necessary to demonstrate conformance with Dam Safety Program Requirements, as set forth in Public Resources Code section 25525. The applicant's proposal to utilize GEN-3 instead of Water Conditions 5 and 6 is not a substitute for conformance and applicant's proposal that DWR-DSOD would be required to negotiate its fees with applicant is without merit.

Water Conditions 5 and 6 are necessary to demonstrate conformance.

The applicant's request to delete Water Conditions 5 and 6 in their *entirety* is not supported by the law or the evidentiary record. Public Resources Code section 25525 provides that the CEC may not certify a facility if it does not conform with applicable state law unless the CEC makes certain overriding findings.

Reneé Webster-Hawkins

September 16, 2025

Page 3

As set forth in the evidentiary record, the applicant has not demonstrated conformance with applicable provisions of the Dam Safety Program Requirements.¹ For example, the applicant has not completed design of the dam, which is still at the conceptual phase, nor has the applicant prepared emergency planning documents that would be used to respond to a dam emergency. While the CEC can approve the project and issue a certification at this conceptual phase, Water Conditions 5 and 6 provide assurance that the Compliance Project Manager (CPM) and DWR-DSOD receive the required geotechnical and design information to ensure the dam will be completed in conformance with the Dam Safety Program Requirements.

The applicant's claim that DWR-DSOD's role should be limited to compliance verification is not supported by the law. Compliance verification is the final step in the CPM and DWR-DSOD review but DWR-DSOD's role includes geotechnical and dam design assessment, and as needed modeling, to ensure public safety. As discussed above, without Water Conditions 5 and 6, there is no assurance that this project conforms with the Dam Safety Program Requirements, as required by the Public Resources Code. DWR-DSOD is also concerned that the applicant's proposal to limit DWR-DSOD's role to compliance verification, but without a condition to confirm compliance with, would improperly limit DWR-DSOD's review and would not conform with Dam Safety Program Requirements.

GEN-3 is not appropriate for DWR-DSOD's role.

Applicant's request to substitute conformance with Dam Safety Requirements to the Dedicated Chief Building Official (DCBO) function is not supported by law. GEN-3 is not law and should not be used to substitute conformance with the Dam Safety Program Requirements. DWR-DSOD is not the DCBO, and the applicant's suggestion that if DWR-DSOD were voluntarily retained as a DCBO under GEN-3 that DWR-DSOD must negotiate its fees with the applicant is without merit. Applicant's suggestion would require DWR-DSOD to negotiate its fees, which are already set in statute and regulation. DWR-DSOD is not a private consultant and will not negotiate its statutory fees with applicant.²

¹ The applicant claims that Water Conditions 5 and 6 are not necessary in their *entirety* for "LORS compliance" but has not provided any explanation as to how LORS will be met without these conditions. Without these conditions, applicant may believe that it can disregard conformance with Dam Safety Program Requirements if the CEC certifies the project.

² As a matter of public policy, it would also be inappropriate to require a state agency to negotiate its fees with a regulated entity. Unlike third party consultants, there is only one DWR-DSOD. If applicant fails to agree to terms with a third-party consultant, they can find another one, this is not the case with DSOD and would ultimately give the applicant inappropriate influence over the scope of DWR-DSOD's review.

Reneé Webster-Hawkins

September 16, 2025

Page 4

Even if GEN-3 applied to DWR-DSOD activities for this project, GEN-3 provides that local agencies, that serve as the DCBO, negotiate their fees with the CEC. Under GEN-3 the local agencies are not required to negotiate with the applicant nor is the applicant's agreement required. GEN-3 does not include state agencies, as it is likely that a state agency has not served as the DCBO. Even so, as a state agency, DWR-DSOD would be treated similarly to a local agency and would negotiate its fees directly with the CEC. GEN-3 also provides that the CEC and a local agency could agree on a fee based on the value of the facility, which would be consistent with the costs associated with the design and construction, which are used to determine DWR-DSOD application fees in Water Code section 6300. While GEN-3 should not be substituted for Water Conditions 5 and 6, the fees paid to DWR-DSOD under GEN-3 would likely be the same fee that would be required to conform with the Water Code.

For the reasons set forth above, DWR-DSOD respectfully requests that the CEC reject the applicant's requests in its briefing as it relates to Water Conditions 5 and 6 and DWR-DSOD's dam safety role, if this project is approved.

Sincerely,



Erik J. Malwick, Ph.D., P.E., G.E
Division Manager
Division of Safety of Dams

cc: Mr. Peter Thyberg, Senior Staff Counsel
Office of the General Counsel
Department of Water Resources
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