

DOCKETED

Docket Number:	21-AFC-02
Project Title:	Willow Rock Energy Storage Center
TN #:	245702
Document Title:	Willow Rock Application for Confidential Designation_Air Quality
Description:	N/A
Filer:	Deric Wittenborn
Organization:	Ellison Schneider Harris & Donlan LLP
Submitter Role:	Applicant Representative
Submission Date:	8/25/2022 4:51:14 PM
Docketed Date:	8/25/2022



August 25, 2022

Mr. Drew Bohan
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

RE: Willow Rock Energy Storage System (21-AFC-02): Application for Confidential Designation for Air Quality Formulas

Dear Mr. Bohan:

Pursuant to Title 20, California Code of Regulations sections 2501 *et. seq.*, Golder Associates USA, Inc., consultant to GEM A-CAES LLC, hereby submits this “*Application for Confidential Designation*” for proprietary equations, formulas, and calculations contained in *Attachment DR2-1: Electronic Files for Appendix 5.1A and 5.1B Worksheets*. *Attachment DR2-1* contains proprietary equations, formulas, and calculations used to produce air quality data and analysis for the Willow Rock Energy Storage Center.

Please contact me at (925) 956-4800 should you have any questions or require additional information. Thank you.

Sincerely,

/s/

David A. Stein
Golder Associates USA, Inc.
1575 Treat Blvd., Suite 201
Walnut Creek, California, USA 94598
E-Mail: david_stein@golder.com

{00584600-4}

**APPLICATION FOR CONFIDENTIAL DESIGNATION
Willow Rock Energy Storage Center (21-AFC-2)**

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

Golder Associates USA, Inc. (“Golder”) seeks confidential designation for information contained in *Attachment DR2-1: Electronic Files for Appendix 5.1A and 5.1B Worksheets*, which were used to produce air quality data and analysis for the Willow Rock Energy Storage Center (formerly the Gem Energy Storage Center).

# of Docs.	Title	# of Confidential Pages
1 of 5	Construction_Off Site_GEM_09202021_ms_v1	Full Workbook
2 of 5	EI_GEM_Construction_Month 18	Full Workbook
3 of 5	Emission_GEM_Operation_09102021_rcb_ms	Full Workbook
4 of 5	Emission Inventory_GEM_Construction_09202021_rbc_ms	Full Workbook
5 of 5	EI_GEM_Construction_Month 26	Full Workbook

Golder is requesting confidential designation only for the proprietary equations, formulas, and calculations used to produce the air quality data and analysis. Golder is not requesting confidential designation for the air quality data or other emissions information, such as that provided in Appendix 5.1A and Appendix 5.1B to the Application for Certification for the Willow Rock Energy Storage Center. Similar information was previously granted confidential designation in the Hidden Hills Solar Electric Generating System Application for Certification proceeding.

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

This information should be held confidential indefinitely in order to protect the proprietary and confidential information identified therein. The information has use beyond the Willow Rock Energy Storage Center project, and has a wide application to other types of projects that require evaluation of potential air quality impacts.

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.*
 - (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.*

The Public Records Act exempts “trade secrets” from public disclosure, including “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.” (Govt. Code § 6254.7(d).)

The California Civil Code Section 3426.1(d) defines a “trade secret” as follows:

(d) “Trade secret” means information, 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.

The Commission’s regulations provide for information to be designated as confidential if it “contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage.” (20 CCR § 2505(a)(1)(D).)

The equations, formulas, and calculations contained in the Microsoft Excel spreadsheets constitute Golder’s trade secrets as defined by the California Civil Code, and are thus exempt from disclosure under the Public Records Act. This information qualifies as a trade secret under Section 3426.1 (d) of the California Civil Code for the following reasons.

This information has an independent economic value to Golder, as this information provides the basis for the air quality data and analysis produced by Golder, and has taken substantial time and resources for Golder to develop. Access to this information by others, such as competitors, would allow the user to derive an economic value from disclosure or use, as the user could use the information to produce air quality data and analysis in return for payment, or in lieu of paying Golder for such analysis. Furthermore, disclosure of the information would give such a user a business advantage, as the information would give the user the ability to produce air quality data and analysis using Golder’s proprietary methods, without the expenditure of time and resources that Golder has invested to develop such equations, formulas, and calculations.

Disclosure of this information would cause a loss of competitive advantage to Golder as it could allow Golder’s competitors and others to review and obtain Golder’s proprietary equations, formulas, and calculations for free, rather than for the full monetary value of such information.

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. However, there is no feasible method of aggregating or masking the information that would not either disclose the information or render the information provided useless. The results of calculations performed using the information has previously been provided to Commission Staff in the Portable Document Format (PDF). In this format, the results of the calculations are presented while protecting the proprietary equations, formulas and calculations. Golder has no objection to the continued distribution of PDF versions of the results of calculations to the public.

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.*

This information is subject to efforts to maintain the secrecy of this information. This information has never been released publicly, is used by and available only to: (1) employees of Golder, who are instructed not to publicly disclose this information; or (2) to consultants and others who have signed a confidentiality/ nondisclosure agreement with Golder.

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 Applicant.

Dated: August 25, 2022

Sincerely,

By: _____ /s/

Dave A. Stein
Golder Associates USA, Inc.
1575 Treat Blvd., Suite 201
Walnut Creek, California, USA 94598
E-Mail: david_stein@golder.com