

**DOCKETED**

<b>Docket Number:</b>	21-AFC-02
<b>Project Title:</b>	Willow Rock Energy Storage Center
<b>TN #:</b>	247441
<b>Document Title:</b>	CEC Response Letter to Willow Rock's 8-25-22 Application for Co9nfdentiality (TN 245701 & 245702)
<b>Description:</b>	N/A
<b>Filer:</b>	Patty Paul
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	11/14/2022 11:11:52 AM
<b>Docketed Date:</b>	11/14/2022



November 14, 2022

**Via Email**

Dave A. Stein  
Golder Associates USA, Incorporated  
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Walnut Creek, California 94598  
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**Application for Confidential Designation: TN 245701 and TN 245702  
Air Quality Formulas in:  
Attachment DR2-1 Construction Off Site  
Attachment DR2-1 Emission Inventory GEM  
Attachment DR2-1 Emission GM Operation  
Docket No. 21-AFC-02**

Dear Dave A. Stein:

The California Energy Commission (CEC) has received Golder Associates' application for confidential designation, dated August 25, 2022, seeking confidential designation for the proprietary equations, formulas and calculations used to produce the air quality data and analysis in the matter of Willow Rock Energy Storage Center's (WRESC) (formerly GEM A-CAES, LLC's (GEM)). The application was submitted via two docket filings, identified as TN 245701 and TN 245702 in the WRESC docket. The application consists of the same letter submitted twice, three relevant documents filed with the letter under TN 245701, and two relevant documents filed with the letter under TN 254702. Submitted as attachments to the application under TN 245701 are the following documents as identified in the docket:

**Attachment DR2-1 Construction Off Site  
Attachment DR2-1 Emission Inventory GEM  
Attachment DR2-1 Emission GM Operation**

Submitted as attachments to the application under TN 245702 are the following documents as identified in the docket:

**Attachment DR2-1 EI GEM Construction Month 18  
Attachment DR2-1 EI GEM Construction Month 26**

These five attachments are Excel workbooks containing data and formulas, as described in the application. The application identifies the equations, formulas, and calculations as trade secrets which the applicant asserts provide it with economic value and which the applicant spent substantial time and resources producing. The applicant has never released the proprietary information publicly.

A properly filed application for confidentiality 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 [Energy] Commission to keep the record confidential." 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 the applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of competitive advantage, the application shall state: the specific nature of the advantage; how the advantage 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 application addresses each of these four requirements by stating:

- *The specific nature of the advantage* – The equations, formulas, and calculations, by remaining confidential, provide a competitive advantage for the applicant.
- *How the advantage would be lost* – The advantage would be lost if competitors obtained their proprietary equations, formulas, and calculations, copied them, and undertook and sold similar analyses at a lower price.
- *The value of the information to the applicant* – No dollar value, but time and money were spent developing the equations, formulas, and calculations, and access to this information by competitors would allow them to use the proprietary tools to sell similar analyses to a variety of customers, thereby creating a revenue source.
- *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The equations, formulas, and calculations are not released except to confidential recipients.

The applicant has made a reasonable claim that the documents contain trade secrets, as defined, and that the Public Records Act authorizes the CEC to keep

the record confidential pursuant to California Code of Regulations, title 20, section 2505(a)(3)(A).

In addition, since the application relates to air quality data, two additional sections of the Government Code are relevant to this application.

Government Code 6254.7(a) All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution...which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide...are public records.

The application specifically states the application for confidentiality does not assert the underlying data is confidential.

Government Code 6254.7(e) Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade secrets as defined in subdivision (d), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data which constitute trade secrets, and which are used to calculate emission data are not public records.

Since the equations, formulas, and calculations in the Excel workbooks are shown to be trade secrets and do not include the air pollution emission data, the application for confidentiality complies with CEC regulations and the Public Records Act and is approved.

### **Conclusion**

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 the California Code of Regulations, title 20, section 2507, the executive director may disclose, 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 in the California Code of Regulations, title 20, sections 2506 to 2507.

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).

Dave A. Stein  
November 14, 2022  
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If you have any procedural questions regarding this application for confidential designation, please email Kari Anderson, senior attorney, at [kari.anderson@energy.ca.gov](mailto:kari.anderson@energy.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan  
Executive Director