

DOCKETED

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STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the matter of:

Application for Certification for the
**WILLOW ROCK ENERGY STORAGE
CENTER**

DOCKET No: 21-AFC-02

**STAFF AND GEM A-CAES LLC'S JOINT
STATEMENT RE: DATA REQUEST
WORKSHOP OUTCOME**

Background

CEC staff is currently engaged in discovery efforts as part of its analysis of the Application for Certification (AFC) for the Willow Rock Energy Storage Center. CEC staff docketed Data Requests Set 1 on July 26, 2022. In a filing dated August 15, 2022, the applicant objected to various data requests from Set 1, including data requests in the topic areas of Alternatives, Biological Resources, Geological Resources, Land Use, and Transmission System Engineering. In total, there were 39 objections in 15 separate groupings.

In its scheduling order filed August 26, 2022, the Committee ordered the following as Item 4: "The Committee acknowledges Applicant's objections filed on August 15, 2022, to certain data requests, as well as Applicant's recommendation that the parties conduct a workshop to resolve those objections. The parties shall file a joint statement that describes the outcome of the workshop, including any agreements reached at the workshop to resolve the objections."

Staff provided public notice of the workshop on September 30, 2022. The workshop was conducted remotely via Zoom on October 11, 2022.

Joint Statement of Workshop Outcome

This joint statement captures all agreements reached at the October 11, 2022, workshop, or, in cases where the applicant requested additional time to confer and conduct further research, at a subsequent information exchange on October 19, 2022.

The applicant's objections to the data requests identified in its August 15, 2022, filing were resolved in a variety of different ways. Some objections were resolved by CEC staff modifying or clarifying the data request language—these are set forth in Resolution Group 1, below, which includes the revised language of the request, and the date by which applicant expects to provide a response.

Items that were resolved by the applicant agreeing to provide requested information

are set forth in Resolution Group 2. The parties agreed to extensions of time for some items, as noted. In certain cases, the applicant has agreed to provide a response it considers sufficient for CEC staff's analysis, with CEC staff reserving the right to ask follow-up questions as necessary.

In certain cases the applicant believes it has already been fully responsive to a particular data request—these items are captured in Resolution Group 3.

In one case CEC staff and the applicant agreed to a future issue-specific information exchange—this item is captured in Resolution Group 4.

When applicant and staff met and exchanged information on October 19, 2022, additional specifics related to responses were agreed to and are reflected in this document as noted.

Resolution Group 1—Revised Data Requests

DR 5 revised text: Please describe the status of the process to secure site access for the adjoining approximately 10-acre parcel, including whether property purchase or a lease is being negotiated. If site access will be through a long-term lease, please provide information on the expected length of the lease and renewal options. ~~This is a continuing request, requiring ongoing updates on the status of the applicant's efforts to obtain adequate rights to the parcel, and for the terms of any occupancy rights once obtained.~~

Applicant response commitment: November 15, 2022.

DR 24 revised text: Please provide a grading plan, a post-construction drainage plan, construction designs, hydraulic study, and/or other documentation that evaluates how modifications to the streams during project construction would affect changes upstream, onsite, and in downstream water and sediment flow patterns. For the purpose of this request, "70% plans" are considered sufficient, or other level of design sufficient for evaluation of potential modifications to streams during project construction, as agreed upon by the permitting agencies.

Applicant response commitment: 60 calendar days after the applicant submits a revised Project Description that captures proposed project changes associated with its "project optimization" activities.

DR 48 revised text:

~~(48) Please conduct a habitat assessment for Crotch bumble bee and provide a report. Please conduct surveys for Crotch's bumble bee. Prior to conducting surveys consult with CDFW and CEC staff for guidance of survey protocol methodology.~~

Applicant response commitment: November 15, 2022, for the habitat assessment, together with a commitment to present its assessment to CEC staff and the California Department of Fish and Wildlife at an information exchange session on November 18, 2022.

DR 68 revised text: Please provide copies of all substantive geotechnical and

geological information collected during the subsurface exploration program as well as the results of analyses and laboratory testing performed on the collected data and/or soil and rock samples. For the purpose of this request, CEC staff will accept copies of the monthly reports submitted to Kern County in connection with the applicant's geotechnical exploration activities conducted pursuant to its use permit with the County. ~~This is a continuing request, requiring ongoing submission of relevant information. Please provide no more than 30 days from the date it is created or received. A weekly records delivery to staff is requested. This request is in effect until staff publishes the final staff assessment.~~

Applicant response commitment: October 17, 2022, and approximately the 15th day of each month thereafter until geotechnical exploration activities at the project site are concluded. CEC staff notes that the first monthly report was docketed by the applicant on October 17, 2022, as promised.

DR 76 revised text: Please discuss the plan and timeline for resolving the project's inconsistencies with the current zoning, as discussed by the County in their letter referenced above. ~~The applicant should obtain from the County the necessary rezones of the parcels from Estate designations to Agriculture designations before CEC staff prepares the Final Staff Assessment.~~

Applicant response commitment: November 15, 2022.

DR 77 revised text: Because of the CEC's exclusive authority over the proposed project, a Conditional Use Permit will not be necessary from Kern County. However, to enable CEC staff to make findings of consistency with the County's zoning designations, please provide an analysis of whether the project would meet the County's required findings for a Conditional Use Permit following the rezoning from Estate designations to Agricultural designations. If the analysis confirms the necessary findings for a Conditional Use Permit could be made, but for the CEC's jurisdiction, please provide an estimate of when the applicant will be able to obtain confirmation from the County that its analysis is accurate. ~~Please provide confirmation from the County that the necessary findings for a Conditional Use Permit could be made, but for the CEC's jurisdiction, to enable CEC staff to make findings of consistency with the County's zoning designations following the rezoning from Estate designations to Agricultural designations.~~

Applicant response commitment: November 15, 2022.

Resolution Group 2—Applicant Response Agreements

Applicant will provide good faith responses to the data requests as agreed to at the workshop. Staff will review the submissions, and issue follow up DRs if needed.

DR 5: Applicant response commitment: November 15, 2022.

DRs 27, 35, 37, 39, 41, 43, 46, 47, 56, 59, and 62: Applicant response commitment: With respect to resumes, these will be submitted in association with future survey work to be done in spring/summer 2023. The resolution associated with the California Natural Diversity Database (CNDDDB) forms is described in "Additional Agreements" below.

DR 28: Applicant response commitment: Cacti mapping will be conducted incidental to the spring 2023 surveys for special-status plant species. Surveys will include 125-foot buffer (125-foot buffer around the gen-tie centerline).

DR 29: Applicant response commitment: Cacti mapping will be conducted as part of spring 2023 surveys for special-status plant species. Depending on the results of the cacti mapping, a cactus salvage and relocation plan would be filed 30 calendar days thereafter.

DR 34: Applicant to provide a standalone desert tortoise survey report. Response commitment: November 15, 2022.

DRs 36: Applicant to provide a standalone desert kit fox summary report. Response commitment: November 15, 2022.

DR 58: Applicant agreed to provide a revised report clarifying the survey methodologies for burrowing owl. Response commitment: November 15, 2022. Applicant docketed responsive material on November 16, 2022. CEC technical staff and CDFW reviewed the material related to burrowing owl mitigation measures and concluded that winter season surveys will not be necessary. Staff considers DR 58 to be resolved.

DR 76: Applicant response commitment: November 15, 2022.

DRs 95-98: Applicant response commitment: October 14, 2022. CEC staff notes that the requested report was provided under confidential cover on October 13, 2022.

Resolution Group 3—Applicant Response Complete or Otherwise Resolved

DR 6: Applicant confirmed at the information exchange on October 19, 2022, that its August 25, 2022 partial response included all relevant information in its possession responsive to the request for information regarding alternative sites.

DR 40 and 42: Subsequent to the applicant's August 15, 2022, filing, which objected to these data requests, applicant filed a partial response on August 25, 2022, that assumed presence for American Badger, and thus both parties consider the August 25, 2022, response to be fully responsive and the objections resolved.

Resolution Group 4—Resolution via Future Information Exchange

DRs 44-45: Applicant requested to confer internally on the issue of whether assuming presence for Mohave ground squirrel is the appropriate plan moving forward. The applicant, CEC staff, and stakeholder agency California Department of Fish and Wildlife agreed to meet on November 18, 2022, to exchange information. If the applicant does not elect to assume presence of the species, it will provide a response to the data requests as promulgated and within a time limit agreed to after the November 18, 2022 information exchange.

Additional Agreements Re: Issued Data Requests

For DRs 27, 35, 37, 39, 41, 43, 46, 47, 56, 59, and 62, CEC staff and the applicant agree that the applicant will file CNDDDB forms with appropriate state records entities for the appropriate species, and to docket copies of the CNDDDB forms when submitted.

For DR 20, after further discussion between staff and applicant on October 19, the applicant agrees to use the project footprint for a "boots on the ground" survey, and intends to cover the 1000/500 foot buffer area with a desktop survey and spot checking.

For DR 25, after further discussion between staff and applicant on October 19, the applicant will use the same protocol as described for DR 20, although in this case they may conduct a drone survey if a desktop survey via Google Earth is deemed insufficient.

For both DR 20 and 25, the applicant agrees to submit a report documenting the survey results by November 15, 2022, and acknowledges CEC staff may ask follow-up questions after CEC staff reviews the applicant's submissions. Staff may issue follow up DRs if needed.

CEC staff withdraws DR 49 without prejudice and will re-issue a data request covering Crotch bumble bee surveys in Data Requests Set 3.

Additional Agreements Re: Further Data Requests:

Further data requests are anticipated by the parties. An agreement regarding the requirement in California Code of Regulations, title 20, section 1716(e) that all requests for information be submitted no later than 180 days from the date the commission determines an application is complete has been reached by the parties and will be filed separately from this Joint Statement.

On Behalf of Gem A-CAES LLC

On Behalf of California Energy Commission Staff

/s/

Jan 11, 2023

Kari Anderson 1/6/2023

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Willow Rock Joint Statement of workshop outcome

Final Audit Report

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