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October 25, 2023

Via Email

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**Application for Confidential Designation
Elmore North Geothermal Project
Docket No. 23-AFC-02**

Dear Samantha Neumyer:

The California Energy Commission (CEC) has received Elmore North Geothermal LLC's (applicant) Application for Confidential Designation, docketed October 11, 2023 (TN 252577) covering the following record:

Response to ICAPCD Data Request #1, Attachment B, Brine Composition Analytical Data (information).

The applicant asserts that the information contains trade secret and proprietary information which is not publicly available. The applicant requests that the information be kept confidential for the life of the project.

An application for confidential designation 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 authorize the Commission to keep the record confidential."

Proprietary Business Information and Trade Secrets

The application states the Public Records Act provides "data that constitute trade secrets and that are used to calculate emission data are not public records." (Gov. Code, § 7924.510(d).)

The applicant asserts that the information contains data used to calculate emission data and constitutes a trade secret. The information is not air emission data or otherwise provided as part of monitoring reports. Instead, the information is comprised entirely of data used to estimate emissions for the purposes of calculating the ratio of non-condensable gas constituents in the steam.

The application also states that a trade secret may include, but is not limited to, any process, compound, production data, or compilation of data that meet the following requirements: "(1) it is not patented, (2) it is known to only certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and (3) it gives its user an opportunity to

obtain a business advantage over competitors who do not know or use it.” (Gov. Code, § 7924.510(f).)

The applicant states that the information is not patented and only known to certain individuals. Further, it contains detailed information regarding the underlying geothermal resource and well productivity, which provides a business advantage over competitors who do not have similar information. Finally, the information provides how the resource is functioning at each specific well based on the breakdown of non-condensable gas in the steam, which enables operators to determine the output of the underlying geothermal resource.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705(k), 7930.005, 7930.205; Civ. Code, § 3426.1; 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, §§ 7927.705, 7930.005, 7930.205; 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 the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) by stating:

- 1) *The specific nature of the advantage* – The information provides how the geothermal resources is functioning at each specific well based on the breakdown of non-condensable gas in the steam and can be used to determine the output of the geothermal resource.
- 2) *How the advantage would be lost* – Disclosure may cause a loss of competitive advantage to the applicant as competitors could gain insights into the viability of the geothermal resource in this area and the productivity of the wells.
- 3) *The value of the information to the applicant* – The information provides detailed information regarding the underlying geothermal resource and well productivity, which provides a business advantage over competitors who do not have similar information.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The Information is accessible only to employees or

consultants working on behalf of the project on a need-to-know basis and to agencies with regulatory oversight over the project such as Imperial County Air Pollution Control District's and the CEC.

Executive Director's Determination

The applicant has made a reasonable claim that the information can be maintained as confidential for the life of the project. As such, the applicant's request for confidential designation of the information specified above is granted.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director