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November 27, 2023

Via Email

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**Application for Confidential Designation for Data Response Set 2 Figures
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 27, 2023 (TN 252816) covering the following ("Set 2 Figures"):

- Figure DRR 10b-1, Preliminary Hot Brine Injection Well Diagram
- Figure DRR 10b-2, Preliminary Aerated Brine Injection Well Diagram
- Figure DRR 10c-1, Injection Zone Contour Map
- Figure DRR 10d-1, Injection Wells and Formations

The applicant asserts that the Set 2 Figures contain trade secrets and proprietary information that is not publicly available. The applicant notes that the California Department of Conservation, Geologic Energy Management Division (CalGEM) has granted confidential status for all records relating to the wells for the Elmore North Geothermal Project (ENGP). Public Resources Code section 3752 and CalGEM's regulations provide for confidential treatment of the well records until five years from the cessation of drilling operations for that well, unless an extension of confidential status is granted. The applicant requests Figures DRR 10b-1, 10b-2, and 10d-1 be kept confidential for the same period as CalGEM. The applicant requests that Figure DRR 10c-1 be kept confidential through the operating life of the ENGP.

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

As noted above, CalGEM granted confidential status for well records relating to the applicant in accordance with Public Resources Code section 3752 and California Code of Regulations, title 14, sections 1995 through 1997.5. The applicant requests that the

CEC designate Figures DRR 10b-1, 10b-2, and 10d-1 as confidential because the figures contain well records information subject to CalGEM's confidentiality determination.

The applicant asserts that the Set 2 Figures are exempt from disclosure under the Public Records Act as a trade secret and proprietary business information. 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 Set 2 Figures provide detailed information regarding the underlying geothermal resource and proposed well design for the ENGP's injection wells, including specific well depths, locational data, and specific casing information and shoe location.

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 set forth in the Set 2 Figures provides a business advantage over competitors who do not have similar information regarding the underlying geothermal resource and proposed well design.
- 2) *How the advantage would be lost* – The applicant would lose its competitive advantage if competitors gained access to the information. The Set 2 Figures include highly confidential information relating to the injection well design, including specific materials information, as well as location and direction of the

well to best utilize the geothermal resource. Competitors developing geothermal facilities could use the information to gain insights they otherwise would not have regarding 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 applicant states that the information is not patented and only known to certain individuals who use the information to generate electricity from the geothermal source. The applicant states the Set 2 Figures provide a business advantage over competitors who do not have similar information. It is incredibly valuable to the applicant.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information contained in Set 2 Figures could not be legitimately acquired and it would require significant time and resources to duplicate.

Executive Director's Determination

The applicant has made a reasonable claim that the Set 2 Figures consisting of DRR 10b-1, 10b-2, 10c-1, and 10d-1 can be maintained as confidential. As such, DRR 10b-1, 10b-2, and 10d-1 will be confidential for five years from the cessation of drilling operations for that well, unless an extension of confidential status is granted. DRR 10c-1 will be confidential through the operating life of the Elmore North Geothermal Project.

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