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January 26, 2022

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**APPLICATION FOR CONFIDENTIAL DESIGNATION:
Appendix 3A, Phase I Interconnection Study Documents
Gem Energy Storage Facility, Docket No. 21-AFC-02**

Dear Samantha Neumyer:

The California Energy Commission (CEC) has received GEM A-CAES LLC's application for confidential designation, dated December 2, 2021, covering the following Appendix 3A Phase I Interconnection Study Documents:

- 1. Interconnection Request and Generator Interconnection Study Process Agreement.*
- 2. Queue Cluster 13 Phase I Interconnection Study Report, January 25, 2021.*
- 3. Appendix A-Q1782, Queue Cluster 13 Phase I Report, January 25, 2021.*
- 4. Queue Cluster 13 Phase 1, Attachment 2, Interconnection Facilities, Network Upgrades and Distribution Upgrades, January 25, 2021.*
- 5. Queue Cluster 13 Phase I, Attachment 2, January 25, 2021.*
- 6. Queue Cluster 13 Phase 1, Attachment 3, Allocation of Network Upgrades for Cost Estimates and Maximum Network Upgrade Cost Responsibility.*
- 7. Queue Cluster 13 Phase 1, Attachment 6, IC Provided Generating Facility Dynamic Data.*
- 8. Queue Cluster 13 Phase 1, Attachment 7, Midway Substation Short Circuit Duty Assessment, January 25, 2021.*
- 9. Queue Cluster 13 Phase 1 Area Report, Appendix E, Cost and Construction Duration Estimates for Upgrades in Area.*
- 10. Appendix H: Table 1: Three – Phase-to-Ground Fault Analysis.*

11. *Appendix H: Table 2: Single – Phase-to-Ground Fault Analysis.*
12. *Addendum to Appendix A, Queue Cluster 13 Phase I Report, March 10, 2021.*
13. *Addendum to Appendix A, Attachment 3: Allocation of Network Upgrades for Cost Estimates and Maximum Network Upgrade Cost Responsibility.*
14. *Addendum to Appendix A, Attachment 6: IC Provided Generating Facility Dynamic Data.*
15. *Queue Cluster 13 Phase I, Attachment 1, Interconnection Facilities, Network Upgrades and Distribution Upgrades, March 10, 2021*
16. *Queue Cluster 13 Phase I, Attachment 2.*
17. *QC13 Phase I Study Report, Attachment #2, Addendum.*

The application states that the study documents should be kept confidential for the operating life of the facility and that any aggregation should be in consultation with the California Independent System Operator (California ISO) prior to public release. The application identifies two primary bases for confidentiality: trade secrets and critical energy infrastructure information.

A properly filed Application for Confidentiality 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 authorizes the Commission to keep the record confidential.” The California Public Records Act allows for the non-disclosure of corporate financial records, corporate proprietary information, and “. . . information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California.” (Gov. Code section 6254.15.)

In addition, 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 sections 6254(k), 6276, 6276.44; Evid. Code section 1061(a); Civ. Code section 3426.1(d)) 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.

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 section 3426.1(d); *See also* Gov. Code sections 6254(k), 6276, 6276.44; Evid. Code section 1061(a); *Uribe v. Howie* (1971) 19 Cal. App. 3d 194, 207.)

The application states the study documents contain trade secrets related to the specific technologies employed and commercially valuable information related to the applicant's interconnection queue. The application also states the study documents include commercially sensitive transmission planning and cost information that falls within the definitions of "trade secret" and have independent economic value from not being generally known to the public or to the applicant's competitors, who can obtain economic value from its disclosure or use. Finally, the application notes that disclosure may cause a loss of competitive advantage to the applicant as competitors could ascertain transmission planning and cost information that may affect bids in competitive solicitations and that the applicant has only shared the study documents with employees and consultants.

The study documents include data provided to and reports generated by California ISO. CEC staff contacted California ISO to confirm how the study documents are characterized under its public access requirements. The California ISO legal office indicated that, under its large generator interconnection agreement for interconnection requests, California ISO maintains as confidential all commercially sensitive information relating to a submitter's technology, research and development, business affairs, and pricing contained in the study documents for the term of the interconnection agreement.

Based on the above, the applicant has made a reasonable claim that the law authorizes the CEC to keep the study documents confidential as trade secrets and business proprietary information consistent with California ISO's confidential designation.

The application also states that the study documents contain Critical Energy Infrastructure Information (CEII). Government Code section 6254(ab) sets forth the protection from public disclosure certain infrastructure information provided the following are met: 1) The information is critical infrastructure, as defined in section

131(3) of Title 6 of the United States Code (U.S.C.), and 2) the information is voluntarily submitted to the Governor's Office of Emergency Services for use by that office. Importantly, section 6254(ab) expressly states that this subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

The Department of Homeland Security and Federal Energy Regulatory Commission (FERC) have processes in place to designate information as protected CEII, but the same limitations found in Government Code section 6254(ab) apply, where the information must be voluntarily submitted to the federal agency for designation and the designation does not cover data independently obtained by a state agency. The salient provision of federal law states, in part, "nothing in this section shall be construed to limit or otherwise affect the ability of a State . . . agency . . . to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law." (See 6 U.S.C. section 673 and 18 CFR section 388.113)

The application does not indicate any of the information contained in the study documents has been submitted to the Governor's Office of Emergency Services or for designation by the Department of Homeland Security or FERC as CEII. In response to staff's inquiry, the California ISO legal office indicated that, while they do maintain the study documents as confidential, as discussed above, the basis for that designation is not necessarily CEII.

The applicant has not made a reasonable claim that the study documents can be withheld as CEII since the study documents have not been provided to the relevant federal agencies for designation and the records in the possession of the CEC were not obtained from the Department of Homeland Security or FERC.

Executive Director's Determination

For the reasons stated above, the applicant's request for confidential designation for the study documents is granted for the life of the interconnection agreement.

Be advised that 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 California Code of Regulations, title 20, section 2507, 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 for acting on a

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petition and criteria for disclosing or releasing records previously designated as confidential are set forth in California Code of Regulations, title 20, sections 2506-2507.

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).

If you have any questions concerning this matter, please contact Jennifer Baldwin at jennifer.baldwin@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Bohan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Drew Bohan
Executive Director