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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

**APPLICANT’S NOTICE PURSUANT TO 20 C.C.R. § 1716(f)
REGARDING STAFF’S DATA REQUESTS SET 1**

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**STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission**

In the Matter of:)
)
Application for Certification for the) Docket No. 21-AFC-2
Willow Rock Energy Storage Center)
)
_____)

**APPLICANT’S NOTICE PURSUANT TO 20 C.C.R. § 1716(f)
REGARDING STAFF’S DATA REQUESTS SET 1**

Pursuant to Section 1716(f) of the California Energy Commission’s (“CEC”) regulations, GEM A-CAES LLC (“the Applicant”) hereby provides this notice that additional time is required to respond to certain data requests set forth in CEC Staff’s Data Requests Set 1 issued on July 26, 2022. The Applicant also provides notice of its objection to the data requests in Data Requests Set 1 described in Sections II and III. Without waiving any of these objections, Applicant reserves the right to provide, and will endeavor to provide responses in whole, or in part, to some or all of these Data Requests.

I. NEED FOR ADDITIONAL TIME TO RESPOND

As described in the Applicant’s *Response to CEC Staff’s Issues Identification Report and Proposed Schedule*¹ (“IID Report”), the Applicant is engaged in geotechnical data collection activities and an optimization of the Willow Rock Energy Storage Center (“Willow Rock”) based on the data collected. Because several of Staff’s data requests involve information specific to the configuration of Willow Rock, additional time is needed to respond to these requests. Other data requests require additional survey information or the preparation of new reports based on information already available to the Applicant. Therefore, the Applicant requires additional time to respond to Data Requests 10, 11, 12, 14, 16, 19, 71, 72, 83, 84, 85, 86, 87, 91, 92, 93,

¹ TN#: 244399.

103, and 104-111. The Applicant anticipates that a response to these data requests will be provided on or before September 25, 2022. The Applicant also requires additional time to respond to Data Requests 20, 21, 22, 23, 33, 80, 88, 89. The Applicant anticipates that a response to these data requests will be provided on or before October 31, 2022. Finally, additional time will be required to respond to Data Requests 52-56 (Swainson's hawk) and 60-63 (special status plant species) given the seasonal nature of the surveys. The Applicant will coordinate with CEC Staff regarding the timeframe to provide responses to these data requests.

II. NOTICE OF OBJECTION

Section 1716(b) of the Commission's regulations provides:

Any party may request from the applicant any information reasonably available to the applicant which is relevant to the . . . application proceedings or reasonably necessary to make any decision on the . . . application.²

Pursuant to Section 1716, a party may request from an applicant information that is *reasonably available* to it. Section 1716 does not require that an applicant “perform research or analysis on behalf of the requesting party.”³ In evaluating whether a data request involves “discoverable information” or “undiscoverable analysis or research,” the CEC typically considers four factors: (1) the relevance of the information; (2) whether the information is available to the applicant, or from some other source, or whether the information has been provided in some other form; (3) whether the request is for data, analysis, or research; and (4) the burden on the applicant to provide the data.⁴ The Applicant objects to the data requests below as not meeting the requirement of Section 1716(f).

² 20 C.C.R. § 1716(b).

³ See Committee Ruling on Intervenor Center for Biological Diversity's Petition to Compel Data Requests, Docket No. 07-AFC-6 (Dec. 26, 2008).

⁴ *Id.*

A. DATA REQUEST 5: STRICKLEN PARCEL

Data Request 5 is a “continuing request” that requests information regarding the status of securing site access to the Stricklen parcel, including “the terms of any occupancy rights once obtained.” The Applicant objects to Data Request 5 as it requests privileged information, confidential business and trade secret information, and contractual terms.

B. DATA REQUEST 6: PRELIMINARY GEOLOGIC EXAMINATIONS

Data Request 6 requests a copy of Hydrostor’s preliminary geologic examination of the project area, including the U.S. Bureau of Land Management (“BLM”) site, Rosamond Hills and Little Buttes sites. The Applicant objects to Data Request 6 on the basis that it requests privileged confidential business and trade secret information. However, the Applicant will provide a non-confidential summary responsive to this request.

C. DATA REQUEST 24

Data Request 24 requests a grading plan, post-construction drainage plan, construction designs, hydraulic study, and other information that is typically required as a condition of certification and prepared post-certification. This information is not relevant to a decision that the Commission must make on the Application for Certification, and is not readily available at this stage in the proceeding as these plans are typically drafted following detailed design of the facility. Therefore, the Applicant objects to Data Request 24.

D. DATA REQUESTS 20, 25, 34, AND 36: SURVEY BUFFER AREAS

Several of the data requests set forth in Data Requests Set 1 constitute undiscoverable analysis or research. The majority of the biological resources data requests set forth in Data Requests Set 1 request that the Applicant conduct new surveys in buffer areas extending 1,000 feet from the project site and 500 feet from either side of the centerline of the project linears.

Such information is not readily available to the Applicant, particularly since the Applicant does not have site access to some of the areas. Further, the information requested has limited relevancy due to the extensive baseline environmental information that the Applicant has already provided and the fact that such areas will not be directly disturbed by the project. Finally, the requests are burdensome, as they far exceed any buffer area survey requirements prescribed by applicable protocols. These data requests are also overbroad and vague. For these reasons, the Applicant objects to the buffer areas specified in Data Requests 20, 25, 34, and 36.

For Data Request 20, the Applicant will provide a new delineation and hydrologic analysis once the project optimization has been completed.

E. DATA REQUESTS 27, 35, 37, 39, 41, 43, 46, 47, 56, 59, AND 62: SUBMISSION OF CNDDDB FORMS AND RESUMES

Section 1716 authorizes parties to request information from other parties. However, Data Requests Set 1 contains several data requests that do not request information, and instead direct the Applicant to submit forms to the California Natural Diversity Database (“CNDDDB”). Several data requests also direct the Applicant to provide biologist resumes “for review and approval” prior to surveys. No such CEC Staff approval exists in applicable law or regulation for consideration of an Application for Certification (“AFC”). The Applicant objects to Data Requests 27, 35, 37, 39, 41, 43, 46, 47, 56, 59, and 62 as beyond the scope of Section 1716 and as overly burdensome. The Applicant has already submitted CNDDDB forms relating to the biological resources surveys conducted in support of the site. If applicable, any future surveys conducted that include positive occurrences will be documented on CNDDDB forms and submitted to the California Department of Fish and Wildlife. Further, to the extent that the Applicant conducts additional surveys, biologist resumes will be provided for informational

purposes (not approval) and will demonstrate that the surveys were conducted by qualified individuals.

F. DATA REQUESTS 28 AND 29: CACTUS SPECIES

Data Request 28 requests mapping of “all cacti species” found on the project site, including a 1,000 foot buffer and 500 feet on either side of the centerline of the gen-tie route. Information regarding the specific locations of all common (non threatened or endangered) cacti species found on the project site is not reasonably available to the Applicant and would therefore require new surveys to obtain the information necessary to conduct the mapping. Such surveys for common species are not required by any applicable laws, ordinances, regulations, or standards (“LORS”). Therefore, the Applicant objects to Data Request 28 as requesting undiscoverable analysis and research not required by Section 1716.

Similarly, Data Request 29 requests a Draft Cactus Salvage and Relocation Plan that would detail, among other items, where cacti species occur, possible relocation sites, preconstruction impact and avoidance assessment, salvage and relocation process, and monitoring for success criteria. Such plans for common species are not required by any applicable LORS, and are typically prepared post-certification prior to the start of construction. Therefore, the Applicant objects to Data Request 29 as requesting undiscoverable analysis and research not required by Section 1716.

G. DATA REQUEST 34: NEW DESERT TORTOISE SURVEY

Data Request 34 requests that the Applicant conduct new surveys for the desert tortoise. Focused surveys for the desert tortoise were already conducted in support of the AFC. See Attachment DA52-1, TN# 242779. Requiring the Applicant to conduct additional surveys is not necessary given that surveys have already been conducted. Therefore, the Applicant objects to

Data Request 34 as requiring undiscoverable research and analysis, requesting already available information, burdensome, and not necessary for a Commission decision in this proceeding.

H. DATA REQUESTS 36-38: DESERT KIT FOX

Data Requests 36-38 all relate to the desert kit fox, including requests for focused species surveys, review and approval of biologists to conduct the surveys, and detailed maps. While the desert kit fox has status as a fur-bearing mammal for the purposes of hunting and trapping provisions of California law, it is otherwise not a special status listed either in the California Endangered Species Act or local LORS. Significantly, the Applicant is not engaged in hunting or trapping, making the LORS cited irrelevant to any question the Commission must decide in this proceeding.

Moreover, information regarding the desert kit fox, including whether any were observed during biological surveys of the site, mapping of suitable dens and burrows, and descriptions of desert kit fox habitat were already provided a part of the Application for Certification and Data Adequacy supplemental materials. Requiring the Applicant to conduct additional surveys is not necessary given the status of the species (or lack thereof) and would require additional substantial costs and resources. Therefore, the Applicant objects to Data Requests 36-38 as requiring undiscoverable research and analysis, requesting already available information, burdensome, and not necessary for a Commission decision in this proceeding. To the extent that the Applicant already has additional information responsive to these requests, such information will be provided.

I. DATA REQUESTS 40-42: AMERICAN BADGER

Data Requests 40-42 all relate to the American Badger, including requests for focused species surveys, review and approval of biologists to conduct the surveys, and detailed maps.

Surveys for American Badger were already conducted in support of the AFC, and substantial information regarding the species, including whether any were observed during biological surveys of the site, mapping of suitable dens and burrows, and descriptions of habitat were already provided a part of the AFC and Data Adequacy supplemental materials. Requiring the Applicant to conduct additional focused surveys is not necessary given substantial information already provided, would require additional substantial costs and resources. No protocol surveys exist for this species. Therefore, the Applicant objects to Data Requests 40-42 as requiring undiscoverable research and analysis, requesting already available information, burdensome, and not necessary for a Commission decision in this proceeding. To the extent that the Applicant already has additional information responsive to these requests, such information will be provided.

J. DATA REQUESTS 44-45: MOHAVE GROUND SQUIRREL

Data Requests 44 and 45 relate to the Mohave ground squirrel. The project site is located outside of the known range of this species. Therefore, the Applicant objects to Data Requests 44-45 as requiring undiscoverable research and analysis, overly burdensome, and not necessary for a Commission decision in this proceeding. To the extent that the Applicant has information responsive to these requests, such information will be provided.

K. DATA REQUESTS 48-49: CROTCH'S BUMBLEBEE

Data Requests 48-49 relate to the Crotch's bumblebee, including requests for focused species surveys and preparation of a survey report. The Crotch's bumblebee is not a special-status species, and there are no established protocols to conduct surveys. The Applicant is concerned about the proposed scope of the surveys, including timing and schedule considerations, and the potential costs. No protocol surveys exist for this common species, and

such surveys for common species are not required by any applicable LORS. Therefore, the Applicant objects to Data Requests 48-49 as requiring undiscoverable research and analysis, overly burdensome, and not necessary for a Commission decision in this proceeding. To the extent that the Applicant has information responsive to these requests, such information will be provided.

L. DATA REQUEST 58: BURROWING OWL

Data Request 58 requests that the Applicant conduct new surveys for the Western Burrowing Owl. Focused surveys for the Western Burrowing Owl were already conducted in support of the AFC. A report of the focused surveys, including a description of the transects used, were provided as part of the Applicant's Data Adequacy supplemental filings. See Attachment DA52-1, pp. 12, 14 TN# 242779. Substantial information regarding the species, including whether any were observed during biological surveys of the site, mapping of suitable dens and burrows, and descriptions of habitat were already provided as part of the AFC and Data Adequacy supplemental materials. Requiring the Applicant to conduct additional surveys is not necessary given that the surveys already conducted are consistent with existing protocols, and would unnecessarily require expenditure of additional resources. Therefore, the Applicant objects to Data Request 58 as requiring undiscoverable research and analysis, requesting already available information, burdensome, and not necessary for a Commission decision in this proceeding.

M. DATA REQUEST 68: GEOLOGICAL INFORMATION

Data Request 68 requests copies of "all substantive geotechnical and geological information collected during the subsurface exploration program" in addition to results of analyses and laboratory testing. Data Request 68 states that this is a continuing request,

requiring weekly delivery of information until publication of the Final Staff Assessment. The Applicant is undergoing geotechnical and data collection activities, analyses, and laboratory testing at great cost. The Applicant objects to Data Request 68 on the basis that it requests privileged confidential business and trade secret information, as overly broad, and as unduly burdensome. However, the Applicant will provide a non-confidential summary responsive to this request.

N. DATA REQUESTS 76-77: LAND USE

The Applicant objects to Data Request 76 to the extent that it requires the Applicant to obtain any necessary rezones from Kern County prior to preparation of the Final Staff Assessment (“FSA”). Such a position (no FSA without a rezoning being completed) is inconsistent with how the Commission has addressed issues of rezoning and General Plan amendments in the past. The Applicant intends to apply for a rezoning of the project site and other land use actions described by Kern County, consistent with past Commission practice. The publication of the FSA cannot and should not be contingent upon receipt of such approvals out of the proper sequence. Similarly, Data Request 77 requests that the Applicant provide confirmation from the County regarding any necessary Conditional Use Permit findings. The Applicant intends to work collaboratively with Kern County, and to the extent that the County chooses to provide such confirmation to either Staff or the Applicant, it will be docketed. However, the Applicant objects to any requirement that such confirmation be provided as part of the discovery process.

O. DATA REQUEST 95-98: PHASE II INTERCONNECTION STUDY AND WHIRLWIND SUBSTATION INFORMATION

Data Request 95 requests that the Applicant provide the California Independent System Operator Phase II interconnection study for the project, including specific provisions that the

Phase II Study must contain. The Applicant has no objection to providing the Phase II Study. However, the Applicant objects to Data Request 95 to the extent that it requires that the Phase II Study to contain specific information or analyses, including the request for specific files and power flow diagrams. The Applicant does not have control over the information and analyses contained in the Phase II Study or regarding the Whirlwind Substation. Therefore, Applicant objects to Data Requests 95-98 as requesting information not available to the Applicant, as overly broad, and as unduly burdensome.

III. CONCLUSION

As described in the Applicant's response to the IID Report, the Applicant believes that a workshop to discuss the Data Requests Set 1 biological resources data requests, these objections, and potential resolution of these matters would be beneficial.

Dated: August 15, 2022

Respectfully submitted,

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