

DOCKETED

Docket Number:	21-AFC-02
Project Title:	Willow Rock Energy Storage Center
TN #:	245754
Document Title:	Willow Rock Energy Center Scheduling Order
Description:	***This Document Supersedes TN 245708***
Filer:	Patricia Carlos
Organization:	California Energy Commission
Submitter Role:	Hearing Office
Submission Date:	8/31/2022 10:24:27 AM
Docketed Date:	8/31/2022

CALIFORNIA ENERGY COMMISSION

715 P Street
Sacramento, California 95814

energy.ca.gov

CEC-70 (Revised 11/2021)



IN THE MATTER OF:

Willow Rock Energy Storage Center

Docket No. 21-AFC-02

COMMITTEE SCHEDULING ORDER

This Scheduling Order is prepared by the Committee¹ in this proceeding to establish the schedule for the prehearing phase of the Application for Certification (AFC) proceeding for the Willow Rock Energy Storage Center (Willow Rock) pursuant to California Code of Regulations, title 20, section 1709.7(c).

BACKGROUND

On December 1, 2021, GEM A-CAES LLC (Applicant) filed an AFC with the California Energy Commission (CEC) to construct and operate the Gem Energy Storage Center.² On August 5, 2022, Applicant changed the name of the project to the Willow Rock Energy Storage Center.³ Willow Rock is proposed as a nominal 500 megawatt (MW) energy storage center, deploying Hydrostor Inc. (Hydrostor) Advanced Compressed Air Energy Storage (A-CAES) technology. Willow Rock is proposed to charge at up to 500 MW for up to 14 hours and deliver up to 4,000 MW-hours (MWhs) over an 8-hour period. Willow Rock would be located on two adjoining parcels totaling 71 acres in an unincorporated area of Kern County with the mailing address of 8684 Sweetser Road, Rosamond, California, 93560.

¹ On March 24, 2022, the California Energy Commission (CEC) amended its assignment of a committee to this proceeding to consist of Kourtney Vaccaro, Commissioner and Presiding Member, and Andrew McAllister, Commissioner and Associate Member, to preside over any proceedings arising from the Application. (TN 242449.)

² Information about this proceeding, including a link to the electronic docket, may be found on the CEC's [web page](http://www.energy.ca.gov/powerplant/caes/willow-rock-energy-storage-center) at <https://www.energy.ca.gov/powerplant/caes/willow-rock-energy-storage-center>. Documents related to this proceeding may be found in the [online docket](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-AFC-02) at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-AFC-02>. The Application consists of various documents filed in the online docket beginning with TN 240751-1.

³ TN 244331.

On June 8, 2022, the CEC determined that the Gem Energy Storage Center is exempt from the Notice of Intention process under Public Resources Code section 25540.6(a)(3), and issued an order directing CEC staff (Staff) to process the application as an AFC.⁴ On July 13, 2022, the CEC adopted the Executive Director’s recommendation finding that the Applicant had filed a complete AFC, initiating the 12-month timeline for the CEC to reach a final decision on the AFC pursuant to Public Resources Code section 25540.6., unless the Applicant agrees to a later time for the issuance of a decision.⁵

A. Staff’s Data Requests and Issues Identification Report

On July 26, 2022, Staff filed Data Request Set 1, including data requests for the following technical areas: Air Quality and Greenhouse Gas Emissions, Alternatives, Biological Resources, Geological Hazards and Resources, Land Use, Noise and Vibration, Paleontological Resources, Project Overview, Transportation, and Transmission System Engineering.⁶ On that same date, Staff also sent Tribal Consultation Letters to nineteen Native American tribes and tribal leaders.⁷ Staff has indicated that it plans to file additional data requests in the technical area of Cultural Resources and possibly additional topics.⁸

On August 4, 2022, Staff filed its Issues Identification Report (Staff’s Report) identifying potential issues in the technical areas of Biological Resources, Cultural Resources/Tribal Cultural Resources, Geological Resources, Land Use, Transmission System Engineering, and Transportation. Staff described how the lack of complete data in some areas – specifically Biological and Geological Resources – could inhibit staff’s ability to prepare its Preliminary Staff Assessment (PSA) and analyze whether the impacts from the construction and operation of Willow Rock would be significant. Staff also reported that Kern County’s Zoning Ordinance does not currently allow Applicant’s proposed use of land, and that the site⁹ footprint might encroach on an access road dedication in the Rosamond-Willow Springs Specific Plan. Staff did not suggest a specific deadline for publication of the PSA, and requests that the Scheduling Order include language allowing the publication of the PSA “no later than 60 days after Staff notifies the Committee in a Status Report that Staff has received complete and satisfactory answers to its data requests and thus has no further data requests.” Staff states it intends to file a motion to extend the discovery period beyond the 180-day timeframe provided in

⁴ TN 243536.

⁵ TN 244093.

⁶ TN 244203.

⁷ TN 244223.

⁸ TN 244313.

⁹ “Site” is defined as “any location on which a facility is constructed or is proposed to be constructed.” See Public Resources Code, § 25119.

California Code of Regulations, title 20, section 1716(e), given the amount of data Staff indicates is necessary and believes will not be available beforehand.¹⁰

B. Applicant's Response and Notice

On August 9, 2022, Applicant submitted its Response to Staff's Report (Applicant's Response) disagreeing in part to Staff's data requests for Biological Resources. Applicant recommends that Applicant and Staff meet and confer about Biological Resources, and that a technical workshop be convened to discuss geotechnical data collection and Geological Resources. Applicant articulates several concerns with Staff's proposed schedule to extend discovery and the time to publish the PSA, while acknowledging that it plans to request additional time to respond to certain data requests.¹¹

On August 15, 2022, Applicant filed a notice pursuant to California Code of Regulations, title 20, section 1716(f) stating that it would require additional time beyond the usual 30 days from the date that the request is made, for certain data requested in Staff's Data Request Set 1 (Applicant's Notice). Specifically, Applicant proposes new deadlines of September 25, 2022 and October 31, 2022 for two discrete and enumerated subsets of data requests, referred to respectively herein as Data Set 1B¹² and Data Set 1C¹³. Applicant further states its intention to coordinate with Staff for the timeframe to provide responses regarding Swainson's hawk and special status plant species given the seasonal nature of the required surveys.¹⁴

Additionally, Applicant's Notice objects to 39 data requests on various grounds, contending that the information is privileged, not relevant, undiscoverable, unavailable, or not required nor necessary, or that the requests are burdensome, vague, or overbroad.¹⁵ Applicant recommends that a workshop would be beneficial for potential resolution of these matters.

All data requests not referenced in either Applicant's request for additional time or objections are referred to as Data Set 1A and were due by August 25, 2022.

DISCUSSION OF SCHEDULE

The Committee has considered the requests of both Staff and Applicant and finds as follows:

¹⁰ TN 244313.

¹¹ TN 244399.

¹² TN 245050, pp. 1-2, listing Data Requests 10, 11, 12, 14, 16, 19, 71, 72, 83, 84, 85, 86, 87, 91, 92, 93, 103, and 104-111.

¹³ *Id.* at p. 2, listing Data Requests 20, 21, 22, 23, 33, 80, 88, and 89.

¹⁴ TN 245050, pp. 1-2.

¹⁵ *Id.* at pp. 2-10.

1. The Committee acknowledges Staff's request for relief from the normal deadlines and will allow Staff up to 60 days after the end of the 180-day discovery period to publish the PSA. The Committee also acknowledges Staff's intent to file a motion to extend the discovery period.
2. The Committee acknowledges Applicant's responses expressing the need for extended timeframes to respond to a significant number of Staff's data requests. The Committee will incorporate the proposed extended timeframes for the Data Sets 1B and 1C into the attached schedule. Because the extensions for Data Sets 1B and 1C are well within the 180-day discovery period set by California Code of Regulations, title 20, section 1716(e), there should be no impact on the overall schedule for Staff's preparation of the PSA because of these extensions.
3. The Committee acknowledges that Applicant agrees to conduct seasonal surveys for the Swainson's hawk and special status plant species, and appreciates Applicant's intention to coordinate with Staff regarding the timeframe for responses to the corresponding data requests.¹⁶ Depending on the seasons that the surveys will be conducted, the Committee recognizes that the data production may extend beyond the 180-day discovery period. The Committee encourages Applicant and Staff to meet and confer on this issue,¹⁷ and to specify in their first monthly status reports due September 26, 2022, the revised timeframe for data submittal and impact on the overall schedule for the proceeding that the parties may agree to, if any, so that Applicant can conduct the seasonal surveys for these species.
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 workshop¹⁸ 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.
5. The Committee acknowledges Applicant's proposed schedule for a final decision on the AFC in September 2023, to account for seasonal surveys for Swainson's hawk and special status plant species which may occur after the usual 180-day timeframe for discovery. The Committee will accept Applicant's proposed schedule as consent to extend the time for the CEC's final decision

¹⁶ *Id.* at p. 2, listing Data Requests 52-56 and 60-63.

¹⁷ As used in this Scheduling Order, "meet and confer" means an informal exchange of communications, either in writing or in person, to resolve the issues surrounding the discovery disputes, including the relevance of the requested information, the time necessary to comply with the request, and other such issues. "Meet and confer" sessions limited to the topics just described do not necessarily need to be held during noticed public meetings. On the other hand, if the purpose of the discussions is to "modify staff's positions or recommendations on substantive issues," those discussions must be conducted in a noticed public meeting, consistent with California Code of Regulations, title 20, sections 1209(a) and 1711.

¹⁸ In contrast to "meet and confer", a "workshop" would be a discussion subject to the noticed public meeting requirements consistent with California Code of Regulations, title 20, sections 1209(a) and 1711.

beyond the 12-month statutory deadline to September 30, 2023, unless the Applicant files a statement asserting otherwise in its first monthly status report.

6. Status reports will be required monthly from each party, including Intervenor if the Petition is granted, beginning September 26, 2022, and by the 26th day of each month thereafter, as described in the scheduling order below.
7. The Committee may modify the schedule at any time.
8. The Committee will establish the schedule and dates for the evidentiary phase of the proceeding upon Staff's filing of the Final Staff Assessment.

SCHEDULING ORDER

1. The Committee hereby adopts the schedule for the prehearing phase of the proceeding that is attached below. The Committee encourages the parties to make their best efforts to complete the deliverables ahead of these dates.
2. Prior to filing any motions for extensions or relief from this Scheduling Order, the parties shall use best efforts to first meet and confer to resolve the moving party's dispute; failing that, the motion shall describe the attempt to meet and confer and recommend a resolution.
3. The parties are hereby ordered to submit monthly status reports beginning September 26, 2022, and no later than the 26th day of every month thereafter as set forth in the attached schedule. Status reports shall inform the Committee whether or not the case is progressing satisfactorily and bring potential delays and other relevant matters to the Committee's attention.

PUBLIC ADVISOR AND OTHER CEC CONTACTS

The CEC's Public Advisor assists members of the public with participating in CEC proceedings. For information on how to participate in this proceeding, please contact the Public Advisor at publicadvisor@energy.ca.gov, or (916) 957-7910. Requests for interpreting services, reasonable accommodations, and other modifications should be made at least five days in advance. The CEC will work diligently to accommodate all requests based on the availability of the service or resource needed.

Direct questions of a procedural nature related to the AFC to Hearing Officer Renée Webster-Hawkins at renee.webster-hawkins@energy.ca.gov or (916) 237-2507

Direct technical subject inquiries concerning the AFC to Project Manager, Leonidas Payne at leonidas.payne@energy.ca.gov or (916) 838-2124.

Direct media inquiries to mediaoffice@energy.ca.gov or (916) 654-4989.

AVAILABILITY OF DOCUMENTS

Information about the Application, as well as notices and other relevant documents pertaining to this proceeding, may be viewed on the [Willow Rock Energy Storage Center webpage](https://www.energy.ca.gov/powerplant/caes/willow-rock-energy-storage-center) at: <https://www.energy.ca.gov/powerplant/caes/willow-rock-energy-storage-center> or scan the following QR code:



IT IS SO ORDERED.

Dated: August 26, 2022

Dated: August 26, 2022

APPROVED BY:

Kourtney Vaccaro
Commissioner and Presiding Member
Willow Rock Energy Storage Center
AFC Committee

APPROVED BY:

Andrew McAllister
Commissioner and Associate Member
Willow Rock Energy Storage Center
AFC Committee

Mailed to: List Number: 7544

**WILLOW ROCK ENERGY STORAGE CENTER
(21-AFC-02)
SCHEDULING ORDER¹⁹
AUGUST 26, 2022**

EVENT	DATE
AFC deemed complete	July 13, 2022
Staff filed Data Request Set 1	July 26, 2022
Tribal Consultation Letters sent	July 26, 2022
Staff Issues Identification Report filed	August 4, 2022
Applicant Response to Staff Issues Identification Report filed	August 9, 2022
California Unions for Reliable Energy (CURE Petition to Intervene filed	August 11, 2022
Site Visit and Informational Hearing	August 11, 2022
Applicant's Notice responding to Data Request Set 1 filed	August 15, 2022
Last day for party to oppose CURE's Petition to Intervene	August 25, 2022
Applicant Data Set 1A submitted	August 25, 2022
Committee Order on Petition to Intervene by CURE	On or before September 12, 2022
Applicant submits Data Set 1B	September 25, 2022
Last day for Staff to file 1716(g) Petition in response to Applicant's Notice	September 14, 2022 ²⁰

¹⁹ This Scheduling Order documents past events and dates for a complete record of key events germane to the upcoming discovery and decisional timelines.

²⁰ "A party petitioning the committee for an order to provide information must do so within either 30 days of being informed in writing by the responding party that such information will not be provided or within 30 days of the date the information was provided or was due." (Cal. Code Regs., tit. 14, § 1716(g).)

Monthly Status Reports filed by all parties	September 26, 2022, and by the 26 th day of every month thereafter
Applicant submits Data Set 1C	October 31, 2022
Discovery closes: Last day for any party to request information	January 9, 2023 ²¹
Last day for the local air pollution control officer to submit a determination of compliance review of the AFC	January 9, 2023 ²²
Last day for Applicant to submit data sets	February 8, 2023, or 30 days after last Data Request ²³ , whichever is earlier
Staff files Preliminary Staff Assessment	No later than 60 days after end of 180-day discovery period
Public Comment Period Closes on Preliminary Staff Assessment	30 days after filing of the Preliminary Staff Assessment ²⁴
Staff files Final Staff Assessment	To be determined ²⁵
Last Day to File Petition to Intervene	30 days before the first prehearing conference ²⁶
Last Day to File Objection to any Petition to Intervene	14 days after a Petition to Intervene is filed ²⁷

²¹ "All requests for information shall be submitted no later than 180 days from the date the commission determines an application is complete, unless the committee allows requests for information at a later time for good cause shown." (Cal. Code Regs., tit. 20, § 1716(e).)

²² The determination of whether the facility meets the requirements of the applicable new source review rule and all other applicable district regulations shall be submitted within 180 days for any AFC filed pursuant to Section 25540.6 of the Public Resources Code. (Cal. Code Regs., tit. 20, § 1744.5(b).)

²³ "[T]he party shall provide the information requested within 30 days of the date that the request is made." (Cal. Code Regs., tit. 20, § 1716(f).)

²⁴ Staff's preliminary environmental assessment shall be subject to at least a 30-day public comment period. (Cal. Code Regs., tit. 20, § 1742(c).)

²⁵ After the close of the public comment period, Staff shall file the Final Staff Assessment. (Cal. Code Regs., tit. 20, § 1742(c).)

²⁶ The deadline to file a petition for intervention shall be established by the presiding member, or if no deadline is established, at least 30 days prior to the first day of the evidentiary hearing. (Cal. Code Regs., tit. 20, § 1211.7(b).)

²⁷ "Motions shall be filed and responded to according to a schedule established by the presiding member. In the absence of such a schedule, responses to motions shall be filed within 14 days of the service of the motions." (Cal. Code Regs., tit. 20, § 1211.5.)

Prehearing Conference	To be determined
Evidentiary Hearing	To be determined ²⁸
Committee Files Presiding Member's Proposed Decision (PMPD)	To be determined
Public Comment Period Closes on PMPD	30 days after filing of the PMPD ²⁹
Committee Conference on PMPD	To be determined
Commission Hearing on the Final Decision	To be determined

²⁸ The final staff assessment shall be filed at least 14 days before the first evidentiary hearing. (Cal. Code Regs., tit. 20, § 1742(c).)

²⁹ The presiding member shall set a comment period of at least 30 days from the date of filing. (Cal. Code Regs., tit. 20, § 1745.5(c).)