

DOCKETED	
Docket Number:	23-AFC-03
Project Title:	Black Rock Geothermal Project (BRGP)
TN #:	251876
Document Title:	Applicant's Response to CEC Staff's Issues Identification Report and Proposed Schedule
Description:	N/A
Filer:	Amanda Cooley
Organization:	Ellison Schneider Harris & Donlan LLP
Submitter Role:	Applicant Representative
Submission Date:	8/24/2023 4:24:04 PM
Docketed Date:	8/24/2023

THE STATE OF CALIFORNIA

**State Energy Resources Conservation
and Development Commission**

In the Matter of:)
Application for Certification for the)
Black Rock Geothermal Project)
)
)
_____)

Docket No. 23-AFC-03

**APPLICANT'S RESPONSE TO CEC STAFF'S ISSUES IDENTIFICATION REPORT
AND PROPOSED SCHEDULE**

Christopher T. Ellison
Samantha G. Neumyer
Ellison Schneider Harris & Donlan LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
(916) 447-2166 (Phone)
(916) 447-3512 (Fax)

Attorneys for Applicant

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

In the Matter of:)
)
Application for Certification for the) Docket No. 23-AFC-03
Black Rock Geothermal Project)
_____)

**APPLICANT’S RESPONSE TO CEC STAFF’S ISSUES IDENTIFICATION REPORT
AND PROPOSED SCHEDULE**

Pursuant to the *Notice of Joint Public Site Visits, Joint Environmental Scoping Meeting and Informational Hearing, and Committee Orders* docketed August 9, 2023,¹ Black Rock Geothermal LLC (“the Applicant”), an indirect, wholly owned subsidiary of BHE Renewables, LLC, provides this response to California Energy Commission (“CEC” or “Commission”) Staff’s *Issues Identification Report And Proposed Schedule For The Black Rock Geothermal Project* (“IIR”).²

I. INTRODUCTION

CEC Staff has identified two principal technical areas for the Committee’s attention: Cultural Resources/Tribal Cultural Resources and Water Resources. The Applicant agrees that these technical areas are important and has been working diligently with stakeholders on these issues. The Applicant is confident that the Commission can adopt reasonable conditions mitigating the potential significant effects and ensuring that this project will comply with all applicable laws, ordinances, regulations, and standards. While the Applicant has not yet received CEC Staff’s first set of data requests, the Applicant appreciates that CEC Staff included preliminary questions in the IIR.

The Applicant is, however, seriously concerned with the open-ended schedule proposed in the IIR, which provides no assurance of a timely decision in this matter. As discussed below, the Applicant urges the Committee to adopt a proposed schedule that imposes reasonable deadlines with specific timeframes for all key milestones. Such deadlines are consistent with applicable laws and policies of California that encourage expeditious permitting and construction of geothermal facilities such as those proposed here.

II. RESPONSE TO STAFF’S ISSUES

A. CULTURAL RESOURCES / TRIBAL CULTURAL RESOURCES

The Applicant welcomes the full participation of local tribes in this proceeding and fully recognizes their sovereignty and the importance of tribal cultural resources. To that end, the Applicant is actively engaged in high-level discussions with local tribal representatives to understand and address their concerns. Currently, the Applicant is in the process of arranging a

¹ TN#: 251547.

² TN#: 251662.

meeting with the Kwaaymii Laguna Band of Mission Indians and the Chief Executive Officer of BHE Renewables, LLC that is set to take place as soon as September. While those discussions are not concluded, the Applicant is confident that good-faith discussions will ensure that potential impacts to tribal resources are identified and addressed appropriately. In addition, the Applicant is also confident that such discussions will recognize the jobs and other economic opportunities this project will provide to tribal members.

Cultural resources surveys were conducted in accordance with professional protocols and standards. However, the Applicant understands the concerns raised in the IIR and is in the process of developing additional methods to further survey portions of land that are currently covered in crops to verify that the conditions reported for cultural resources are uniform across the project site. The Applicant understands that CEC Staff will be issuing data requests with respect to this issue, and will work with CEC Staff regarding further study of the area.

B. WATER RESOURCES

While the water resource questions raised in the IIR are largely matters for the Imperial Irrigation District (“IID”) to address, the Applicant is working very closely with the IID to handle any concerns they may have and ensure that the questions are answered in a timely manner. Consistent with the IID’s procedures and policies as well as the Commission’s schedule, the IID is preparing a formal water supply assessment that will inform all parties regarding these matters, including the three questions posed in the IIR.

III. RESPONSE TO PROPOSED PROJECT SCHEDULE

In this case, where the Commission has found that the site for the Black Rock Geothermal Project has sufficient geothermal resources, Public Resources Code section 25540.2(a) requires that “the commission shall issue the final decision on the application, as specified in Section 25523, within 12 months after acceptance of the application for certification of a geothermal powerplant and related facilities....” This deadline can only be extended by mutual agreement between the Commission and the Applicant. Thus, by law, the Commission must issue a final decision in this matter no later than July 26, 2024.

In addition to compliance with its own statute, a timely decision in this matter is critically necessary to meet the resource needs of California. The Applicant has proposed this project in response to landmark state policies mandating the expeditious permitting and construction of new renewable generation, in particular geothermal and other non-intermittent renewable generation. In Decision 21-06-035, the California Public Utilities Commission (“CPUC”) ordered load-serving entities to procure, by 2026, 11,500 megawatts of renewable generation, 2,000 megawatts of which must be non-intermittent such as proposed here. In Decision 23-02-040, the CPUC added an additional procurement requirement of 4,000 megawatts of renewable resources. Recognizing that permitting and constructing such facilities by 2026 is unlikely, the CPUC extended the compliance deadline to 2028. Meeting the state’s resource needs by these deadlines can only be achieved with expedited permitting and construction of precisely the type of project proposed in this proceeding.

Compliance with these statutes and policies is eminently achievable in this proceeding. In contrast with many historic project applications, this project is located on a relatively small footprint

in a well-studied and documented known geothermal resource area (“KGRA”) with several similar generation facilities that have operated successfully for decades. The technology proposed for the Black Rock Geothermal Project has been proven and is well understood. Moreover, as the foregoing authorities recognize, it is a technology that offers firm, baseload renewable energy that can serve the needs of the state and help integrate intermittent technologies. In addition, while we assume nothing and take nothing for granted, this project enjoys strong local support. In short, this project offers a great opportunity to expeditiously: site new renewable resources that will provide grid stability and electric reliability to California.

Given the above, the Applicant has serious concerns regarding the schedule proposed in the IIR. Rather than specific deadlines, the IIR proposes an open-ended schedule with no future deadlines other than that the Preliminary Staff Assessment be due “60 days after staff acknowledgment that it has no further data requests.” Under this proposal, the schedule for this proceeding is entirely under the control of an independent party, CEC Staff, with no specific deadlines to act. Moreover, the criteria set for publication of the Preliminary Staff Assessment (“PSA”) is that CEC Staff “has no further data requests.” Stated simply, there is no balance in the proposed schedule between the desire for data and the Commission’s obligation to make a timely decision.

To adopt an amorphous schedule at the outset of this proceeding sends a message that a timely decision is unimportant. Such a message would be contrary to the Commission’s governing law and the state policies discussed above. Those authorities suggest the Committee should send precisely the opposite message: namely, that the Commission intends to timely act in this proceeding. The Committee should set clear deadlines for all the key events in this proceeding, including completion of discovery, preparation of the Staff’s Assessments, and the ultimate decision. Such deadlines will not deprive any party from petitioning the Committee for a schedule change in the future if circumstances so warrant. But reasonable deadlines will put all parties on notice that the Committee seeks to reasonably expedite this matter consistent with California statutes and policies.³

Last, but not least, the proverbial “arrow of time” is another basic principle consistent with an aggressive, expedited schedule. If the schedule proves in time to be too aggressive, it can always be extended prospectively. On the other hand, a schedule that proves too ambiguous or lax cannot be shortened retrospectively.

For all these reasons, the Applicant strongly urges the adoption of a schedule with clear deadlines for all key milestones as follows:

ACTIVITY	ELMORE NORTH	BLACK ROCK	MORTON BAY
AFC filed	04-18-2023	04-18-2023	04-18-2023
AFC Data Adequacy determination	7-26-2023	7-26-2023	7-26-2023
Staff files Data Requests Set 1	TBD	TBD	TBD

³ Indeed, BHE Renewables, LLC urges the Committee to adopt a schedule that leaves open the possibility of a decision prior to the maximum time allowed by law.

ACTIVITY	ELMORE NORTH	BLACK ROCK	MORTON BAY
Staff files Issues ID Report	08-17-2023	08-17-2023	08-17-2023
Applicant files response to Issues ID Report	08-24-2023	08-24-2023	08-24-2023
Site Visit & Informational Hearing	08-31-2023	08-31-2023	08-31-2023
Data Request & Issues Resolution Workshop (If needed)	September 2023	September 2023	September 2023
Applicant files Data Responses Set 1	30 days following Data Requests Set 1	30 days following Data Requests Set 1	30 days following Data Requests Set 1
Staff files Data Requests Set 2	TBD	TBD	TBD
Applicant files Data Responses Set 2	TBD	TBD	TBD
ICAPCD issues Preliminary Determination of Compliance (PDOC)	11-22-2023	11-22-2023	11-22-2023
Preliminary Staff Assessment filed	12-22-2023	12-29-2023	1-08-2024
Preliminary Staff Assessment workshop	January 2024	January 2024	January 2024
Close of discovery period	1-22-2024	1-22-2024	1-22-2024
Deadline for comments on PSA ⁴	1-22-2024	1-22-2024	1-22-2024
ICAPCD issues Final Determination of Compliance (FDOC)	1-22-2024	1-29-2024	2-7-2024
Final Staff Assessment filed	2-21-2024	2-28-2024	3-8-2024
Opening Testimony filed	3-6-2024	3-13-2024	3-22-2024
Reply Testimony filed	3-13-2024	3-20-2024	4-5-2024
Prehearing Conference	Week of April 8, 2024	Week of April 8, 2024	Week of April 8, 2024
Evidentiary Hearings	Week of April 15, 2024	Week of April 15, 2024	Week of April 15, 2024
Opening Briefs (If needed)	Week of April 29, 2024	Week of April 29, 2024	Week of April 29, 2024
Reply Briefs (If needed)	Week of May 6, 2024	Week of May 6, 2024	Week of May 6, 2024
Committee files Presiding Member's Proposed Decision ("PMPD")	May/June 2024	May/June 2024	May/June 2024
Hearing on PMPD	TBD	TBD	TBD
Committee files errata to PMPD	TBD	TBD	TBD
Commission issues Final Decision	June/July 2024	June/July 2024	June/July 2024

Although the Applications for Certification for the Black Rock Geothermal Project, Elmore North Geothermal Project, and Morton Bay Geothermal Project were all deemed data

⁴ Section 1742 of the Commission's regulations provides for a 30-day comment period on the Preliminary Staff Assessment.

complete on the same date, the Applicant is proposing staggered publication dates for the PSA and Final Staff Assessment.

IV. CONCLUSION

The Applicant thanks the Committee for the opportunity to respond to the IIR and looks forward to the Site Visit and Informational Hearing.

Dated: August 24, 2023

Respectfully submitted,

ELLISON SCHNEIDER HARRIS & DONLAN L.L.P.

By  _____

Christopher T. Ellison
Samantha G. Neumyer
2600 Capitol Avenue, Suite 400
Sacramento, California 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512

Attorneys for Applicant