

DOCKETED

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THE STATE OF CALIFORNIA

**State Energy Resources Conservation
and Development Commission**

In the Matter of:)
Application for Certification for the)
Elmore North Geothermal Project)
)
)
_____)

Docket No. 23-AFC-02

**APPLICANT’S NOTICE PURSUANT TO 20 C.C.R. § 1716(f)
FOR CURE’S DATA REQUESTS SET 2**

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

In the Matter of:)
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Application for Certification for the) Docket No. 23-AFC-02
Elmore North Geothermal Project)
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**APPLICANT’S NOTICE PURSUANT TO 20 C.C.R. § 1716(f)
FOR CURE’S DATA REQUESTS SET 1**

Pursuant to Section 1716(f) of the California Energy Commission’s (“CEC”) regulations, Elmore North Geothermal LLC (the “Applicant”) hereby provides this notice that additional time is required to respond to the California Unions for Reliable Energy’s (“CURE”) *CURE Data Requests Set 2 – Elmore North Geothermal Project*, which was filed on November 27, 2023 (“*Data Requests Set 2*”).¹ Additionally, the Applicant hereby provides notice of objection to certain data requests set forth in *Data Requests Set 2*. Without waiving any of these objections, the Applicant reserves the right to provide responses, in whole or in part, to some or all of the data requests identified below.

I. NEED FOR ADDITIONAL TIME TO RESPOND

A brief period of additional time is required to respond to *Data Requests Set 2* because of the winter holidays and associated work schedules and travel of personnel. The Applicant will provide responses to *Data Requests Set 2* on or before January 19, 2023.

II. NOTICE OF OBJECTION

Section 1716(b) of the CEC’s regulations provides that any party may request from an applicant information that is both (1) reasonably available to the applicant and (2) relevant or reasonably necessary to make any decision on the application for certification.² 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

¹ TN#: 253338.

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).

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 those data requests that request information that is not reasonably available to the Applicant, or which ask the Applicant to prepare analyses or conduct research on behalf of CURE. The Applicant also objects to those data requests that are neither relevant to the proceeding nor reasonably necessary to make any decision on the application for certification (“AFC”).

A. Objection to Requests for “All” Documentation

The Applicant objects to the data requests below as not meeting the requirement of Section 1716(b). In particular, the Applicant objects to all data requests broadly phrased to request “all” documentation or “all” actions as overbroad, vague, and overly burdensome, including, but not limited to, Data Requests 122, 124, 125, 126, 131, 132, 133, 153, 155, 157, 159, 161, 165, 168, 170, 179, 183, 184, 194, 202, 229, 235, and 246. Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to some or all of these data requests.

B. Data Request 122: Identify the chemical composition of the scale wastes.

The Applicant does not possess the information requested in Data Request 122 and will not have such information until the Project is operational. Therefore, the Applicant objects to Data Request 122 as requesting information that is not reasonably available to the Applicant. The Applicant also objects to Data Request 122 as vague, overbroad, and burdensome.

C. Data Request 124: Describe the chemical composition data for the filter cake and provide all supporting documentation, including laboratory sheets.

The Applicant does not possess the information requested in Data Request 124 and will not have such information until the Project is operational. Therefore, the Applicant objects to Data Request 124 as requesting information that is not reasonably available to the Applicant. The Applicant also objects to Data Request 124 as vague, overbroad, and burdensome. Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, regarding the chemical composition of the filter cake.

⁴ *Id.*

D. Data Request 125: Explain the basis of the assumed 95% nonhazardous and 5% hazardous split for filter cake. Provide all engineering calculations, historic data, and chemical composition data and identify all assumptions.

The Applicant objects to Data Request 125 as vague, overbroad, and burdensome.

Specifically, Data Request 125 requests “all engineering calculations, historic data, and chemical calculations,” in addition to requesting that the Applicant “identify all assumptions.” The Applicant also objects to Data Request 125 as potentially requesting information that is confidential, privileged, and that is neither relevant nor reasonably necessary to make any decision on the AFC. Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

E. Data Request 126: Describe the procedures that will be used at the Desert Valley Company’s monofill to dispose of filter cake.

The Applicant objects to Data Request 126 as requesting information that is neither relevant to nor reasonably necessary to make any decision in this proceeding. Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

F. Data Request 131: Provide general cross-sections of the subsurface across the Salton Trough and Project area to illustrate groundwater resources.

The Applicant objects to Data Request 131 as requesting information that is not reasonably available to the Applicant. The Applicant also objects to Data Request 131 as potentially requesting information that is confidential, privileged, and that is neither relevant nor reasonably necessary to make any decision on the AFC.

G. Data Request 132: Provide a map showing groundwater TDS or chloride concentration contours in the perched zone, shallow groundwater aquifer, and the deeper main aquifer.

The Applicant objects to Data Request 132 as requesting information that is not reasonably available to the Applicant. Further, this request requires the Applicant to perform additional research on CURE’s behalf that is not relevant or reasonably necessary to make any decision on the AFC.

H. Data Request 133: Provide information regarding historic pipeline releases over the past ten (10) years at the ten (10) facilities owned and operated by BHE Renewables, operating as CalEnergy. For each release, please identify the date of the release, the amount of fluid released, the cause of the release, the environmental consequences of the release, the steps taken to cleanup the release, and any changes in design that were implemented to prevent similar future releases.

The Applicant objects to Data Request 133 as vague, overbroad, and burdensome. The Applicant also objects to Data Request 133 as requesting information that is neither relevant nor reasonably necessary to make any decision on the AFC.

I. Data Request 153: Provide all documentation supporting the Applicant’s analysis of direct, indirect, and cumulative impacts to the American avocet and its habitat.

The Applicant objects to Data Request 153 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

J. Data Request 155: Provide all documentation supporting the Applicant’s analysis of direct, indirect, and cumulative impacts to the Costa’s hummingbird and its habitat.

The Applicant objects to Data Request 155 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

K. Data Request 157: Provide all documentation supporting the Applicant’s analysis of direct, indirect, and cumulative impacts to the northern harrier and its habitat.

The Applicant objects to Data Request 157 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, this data request.

L. Data Request 159: Provide all documentation supporting the Applicant’s analysis of direct, indirect, and cumulative impacts to the sandhill crane and its habitat.

The Applicant objects to Data Request 159 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

M. Data Request 161: Provide all documentation supporting the Applicant’s analysis of direct, indirect, and cumulative impacts to the snowy plover and its habitat.

The Applicant objects to Data Request 161 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

N. Data Request 165: Provide all documentation supporting the Applicant’s analysis of direct, indirect, and cumulative impacts to the mountain plover and its habitat.

The Applicant objects to Data Request 165 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

O. Data Request 168: Provide all documentation (e.g., studies, reports, literature) for the AFC’s determination that there is no suitable nesting habitat for the white-faced ibis in the BSA.

The Applicant objects to Data Request 168 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

P. Data Request 170: Provide all documentation supporting the Applicant’s analysis of the Project’s direct and indirect impacts to the SBSSNWR.

The Applicant objects to Data Request 170 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

Q. Data Request 179: Provide all documentation supporting the Applicant’s analysis of the Project’s direct and indirect impacts on canals and drains during construction and operations.

The Applicant objects to Data Request 179 vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

R. Data Request 183: State whether the Applicant analyzed how reduced agricultural return flows associated with the Project would indirectly impact: (a) habitat for the desert pupfish, and (b) vegetation communities that are dependent on the agricultural return flows. If so, please provide all supporting documentation.

The Applicant objects to Data Request 183 as vague, overbroad, and burdensome, particularly because it requests “all supporting documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

S. Data Request 184: Describe whether the Applicant quantified flow reductions associated with the Project in relation to baseline conditions and provide all supporting documentation.

The Applicant objects to Data Request 184 vague, overbroad, and burdensome, particularly because it requests “all supporting documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

T. Data Request 194: Provide all documentation (e.g., citations, webpage links, studies, reports) supporting the AFC’s statement that agricultural land is not considered regionally important as habitat for wildlife in the Imperial Valley.

The Applicant objects to Data Request 194 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” The Applicant also objects to Data Request 194 as potentially requesting information that is confidential, and that is neither relevant nor reasonably necessary to make any decision on the AFC. Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

U. Data Request 202: Provide all documentation supporting the Applicant’s analysis regarding how application of rodenticides and herbicides would impact birds and other biological resources in the BSA.

The Applicant objects to Data Request 202 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

V. Data Request 229: Provide all documentation supporting the Applicant’s analysis of the impacts that drilling mud and mud pits may have on wildlife.

The Applicant objects to Data Request 229 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

W. Data Request 235: Provide all supporting documentation for the 80 dBA noise threshold for birds, other than the Huntington Beach Energy Project testimony by bird hearing expert Robert Dooling, Ph.D.

The Applicant objects to Data Request 235 as vague, overbroad, and burdensome, particularly because it requests “all supporting documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

X. Data Request 246: Describe all actions that will be taken to avoid or minimize impacts to occupied animal burrows located in disturbed areas during Project construction.

The Applicant objects to Data Request 246 as vague, overbroad, and burdensome, particularly because it requests that the Applicant describe “all actions.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, this data request.

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Dated: December 18, 2023

Respectfully submitted,

ELLISON SCHNEIDER HARRIS & DONLAN L.L.P.

By  _____

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