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M e m o r a n d u m

To: Commissioner Noemi Gallardo, Presiding Member
Commissioner Andrew McAllister, Associate Member

Date: January 31, 2024

From: California Energy Commission
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Subject: STATUS REPORT #4 FOR MORTON BAY GEOTHERMAL PROJECT (23-AFC-01)

The Presiding Member’s Scheduling Order for the Morton Bay Geothermal Project (MBGP) Proceeding (Scheduling Order) filed on September 15, 2023, orders the parties to file a status report on “October 31st, and by the last business day of every month thereafter.” California Energy Commission staff (CEC staff) is ordered to “include summaries of the progress of discovery in each monthly report, including descriptions of significant communications with other federal, state, local agencies, and tribal governments, and identify any factors that may impact the schedule of the proceeding. Status reports shall also include a description of the outcome of any public workshop or other meeting held during that month.”

Summary of Progress of Discovery and Known Issues

As documented in the Presiding Member’s Scheduling Order for MBGP, the stated last day for any party to request information was January 22, 2024. CEC staff issued data requests regarding all known issues in Data Request Set 4 (DR 4) (TN 253870), filed to the docket on January 12, 2024.

Status of Data Requests/Responses:

On January 12, 2024, CEC staff filed DR 4 (TN 253870). Applicant’s responses are due on February 12, 2024.

On January 19, 2024, the applicant filed CURE Data Response Set 2 (Responses to Data Requests 100 to 244) (TN 254015).

On January 22, 2024, the applicant filed CURE Data Response Set 3 (Responses to Data Requests 245 to 251) (TN 254046).

On January 22, 2024, the applicant filed CURE Data Response Set 3 (Responses to Data Requests 245 to 251 Part 2) (TN 254047).

On January 22, 2024, CURE filed Data Requests Set 4 (TN 254077).

Significant Communications with Other Government, Tribal Government or Interested Entities

Staff had informal meetings with representatives of the Kwaaymii Laguna Band of Mission Indians and the Native American Land Conservancy at the site visit and informational hearing on August 31, 2023. Staff held an initial virtual consultation meeting to discuss the project with representatives of the Agua Caliente Band of Cahuilla Indians on November 22, 2023, where the Tribe requested information on the project and expressed interest in continuing consultation with the CEC for the MBGP. In early December 2023, CEC staff began coordinating with tribes who expressed interest in an intertribal meeting including the Kwaaymii Laguna Band of Mission Indians, Agua Caliente Band of Cahuilla Indians, and the Quechan Tribe of the Fort Yuma Indian Reservation.

CEC staff is currently scheduling the in-field intertribal meeting in early February which would include representatives from multiple tribes, a representative from the Native American Land Conservancy, the applicant's representative, and a paid expert working with a consulting tribe on documenting a related tribal cultural landscape. The bulk of the consultation process is dependent on tribal needs and desires. Staff estimates it could take until the end of May 2024 to complete the Cultural and Tribal Cultural Resources section of the Preliminary Staff Assessment (PSA). Note, on January 19, 2024, CEC staff met with the Kwaaymii Laguna Band of Mission Indians to provide information regarding filing for intervenor status in CEC proceedings.

Factors That May Impact the Schedule

In addition to the tribal cultural resources analysis, several outstanding technical information requests place the schedule for filing a PSA in jeopardy. The Scheduling Order establishes the due date for the PSA as no later than 60 days after the Preliminary Determination of Compliance (PDOC) is filed by the Imperial County Air Pollution Control District (ICAPCD) The Elmore North PDOC was filed on January 19, 2024 (TN 254004), and ICAPCD has indicated that the PDOC for MBGP would be filed approximately two weeks thereafter, on or about February 2, 2024. Sixty days following this date establishes a due date for the MBGP PSA of no later than approximately April 2, 2024. CEC Staff's DR 4, issued on January 12, 2024, contains numerous follow up information requests in multiple technical areas. The applicant's responses are due by February 12, 2024. Depending on the completeness of the responses, staff may be unable to draft and review the PSA by April 2, 2024.

Specifically, the PSA sections for Air Quality, Alternatives, Water Resources, and Transmission System Engineering will likely be delayed, for the reasons set forth below.

Air Quality: In DR 4, CEC staff requested updated NO_x emissions estimates and NO₂ impacts modeling, and information about fire pump engine testing necessary to complete the air quality staff assessment section. If responses to DR 4 are not satisfactory and

complete by the due date, the PSA section for Air Quality may not be complete by the current deadline in the scheduling order.

Alternatives: A robust alternatives discussion is dependent on data responses received for both Alternatives and Water Resources. Staff is still analyzing whether there is a path forward for a water saving alternative cooling system. Depending on the completeness of the responses received and how long it takes technical staff to review responses, it is likely to require between two and three months following receipt of the data responses to complete this PSA section, which would be approximately mid-May 2024.

Transmission System Engineering: The applicant indicated in its Status Report 3 (TN 253765) an expected filing of an updated System Impact Study (SIS) "after it is finalized in January 2024." Despite the applicant's agreement to file the updated document, as of the date of this Status Report, the final SIS and any consequential impacts have yet to be filed. Impacts identified through the anticipated final SIS have the potential to require new data requests. As of the date of this Status Report, staff is unable to predict when the SIS will be provided, the extent of any necessary additional new data requests, or how much time it will take staff to complete portions of the PSA dependent on the SIS.

Water Resources: The applicant filed the draft Water Supply Assessment (WSA) (TN 253193) on November 17, 2023. Following staff's analysis of the draft WSA, additional water resources data requests were included in staff's DR 4. Staff's remaining outstanding concerns surround regional water supply and reliability, future set-asides for non-agricultural projects (including conservation measures), and determining the feasibility of alternative supplies of water, beyond Colorado River water, including for power plant cooling. If satisfactory responses are not timely received, CEC staff is concerned that the Water Resources staff assessment section may not be completed by the PSA due date currently in the Scheduling Order.

For the foregoing reasons, including the number of outstanding data requests, there is concern that the current scheduling order may be inadequate for completing a comprehensive and accurate staff assessment.

CEQA Public Comment Period

The Scheduling Order also directs staff to provide a 30-day comment period for the review of the PSA pursuant to California Code of Regulations, title 20, section 1742(c). Staff notes that, under CEQA, draft environmental impact reports (EIRs) submitted to the State Clearinghouse for review by state agencies require a 45-day comment period. (Cal. Code Regs., title 14, § 15105(a).) This regulation is consistent with Public Resources Code, section 21091(a) (amended, Ch.97, Statutes 2021), which requires a 45-day comment period for such EIRs. Since state agencies such as the California Geologic Energy Management Division (CalGEM) have an interest in reviewing the PSA, which is an EIR substitute under the CEC's Certified Regulatory Program, the committee may wish to further consider ordering a 45-day comment period for the MBGP PSA. Staff notes that Public Resources section 21091 is outside of Chapters 3 and 4 of CEQA, which are the only portions of CEQA from which the CEC's Certified Regulatory Program is exempt.

PSA Due Date

Staff anticipates a potential need for committee intervention regarding the current PSA due date. Nevertheless, in the absence of completely satisfied data needs, staff continues to work diligently to complete all PSA sections. Staff estimates that if a request for extension is necessary, that it would be apparent to staff following the closure of the response period for DR 4, i.e. on or about February 12, 2024. If, at that point, the PSA deadline appears to be infeasible, staff will meet and confer with all parties to resolve any constraints and bring any needed motion to amend the Scheduling Order as appropriate.