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**STATE OF CALIFORNIA**  
**STATE ENERGY RESOURCES**  
**CONSERVATION AND DEVELOPMENT COMMISSION**

***IN THE MATTER OF:***

***Morton Bay Geothermal Project***

**Docket No.: 23-AFC-01**

**Staff's Motion to Extend the Due Date  
for the Preliminary Staff Assessment  
and the Public Comment Period**

**I. INTRODUCTION**

The California Energy Commission (CEC) staff brings this motion under California Code of Regulations, title 20, section 1211.5 seeking an order from the committee to amend the Morton Bay Geothermal Project's September 12, 2023, Scheduling Order in two respects. (TN 252284.) First, staff seeks an amendment to item 2, page 4, and the corresponding item in the Event matrix on page 6, requiring the Preliminary Staff Assessment (PSA) to be filed 60 days after the local air pollution control officer issues the Preliminary Determination of Compliance (PDOC), to reflect a due date of June 25, 2024. This is due to several information gathering needs that remain incomplete. Second, staff seeks to amend the Scheduling Order Event matrix entry on page 6 that limits the public comment period for the PSA to 30 days. Staff requests this period be changed to 45 days to comply with the California Environmental Quality Act (Cal. Pub. Resources Code, § 21091(a).)

**II. BACKGROUND**

On April 18, 2023, Morton Bay Geothermal LLC (applicant), an indirect, wholly owned subsidiary of BHE Renewables, LLC, filed an Application for Certification (AFC) with the CEC for the Morton Bay Geothermal Project and related facilities (MBGP or Project). The AFC seeks to construct and operate geothermal electrical generating and related facilities southeast of the Salton Sea, in unincorporated Imperial County, California near the cities of Niland and Calipatria.

At the May 31, 2023, Business Meeting, the CEC found the AFC deficient in various technical areas (TN 250451). (Pub. Resources Code, § 25522(b).) After receiving supplemental information from the applicant, the CEC deemed the application complete on July 26, 2023 (TN 251219), and staff commenced discovery. An initial public hearing and site visit took place on August 31, 2023.

On September 12, 2023, the committee in this proceeding ordered staff and the applicant to complete monthly status reports and established the Scheduling Order for the Project, pursuant to California Code of Regulations, title 20, section 1709.7(c) (TN 252284). Among other deadlines, the Scheduling Order included

the following: 1) an anticipated November 22, 2023, date that the local air pollution control officer will issue a PDOC, 2) the due date for the PSA as no later than 60 days after the PDOC is filed, and 3) a 30-day public comment period after the filing of the PSA. Because, as explained below, the Imperial County Air Pollution Control District issued the PDOC for this Project on February 2, 2024, the current PSA due date for the Project is April 2, 2024. (The PSA due date for Elmore North Geothermal Project is March 19, 2024; the PSA due date for the Black Rock Geothermal Project is April 16, 2024.)

Staff's efforts to collect additional data, applicant's efforts to provide the data, and changes to the project description are documented in the status reports. On November 30, 2023, staff filed its 2nd status report (TN 253403) which states:

On November 17, 2023, the applicant filed the MBGP Revised General Arrangement Refinement (TN 253188). The filing proposes to relocate the generating facility, along with all related infrastructure approximately 915 feet south/southwest of the former location, but still on the subject parcel. The other components of the filing are a reorienting of project components on the site, and the addition of new project elements (on-site liquid lime storage, for example). CEC staff is reviewing the submittal to determine if staff's preliminary inferences and conclusions regarding the project will need to be reevaluated based on the new information.

On November 17, 2023, the applicant also docketed a draft SB 610 – Water Supply Assessment (draft WSA) (TN 253193). After review, staff had further questions regarding 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. The necessary final WSA is pending with Imperial Irrigation District, who is awaiting a revised assessment from applicant. Staff kept the committee apprised of its concerns.

On December 21, 2023, staff filed its 3rd status report (TN 253708) which states:

Staff's evaluation of information contained in the revised General Arrangement Refinement (TN 253188), and the draft Water Supply Assessment (WSA) (TN 253193) continues. Staff anticipates the technical areas of Air Quality, Alternatives, Biological Resources, Solid Waste, and Water Resources will be the subject of a pending DR Set 4.

Staff requested additional information in the technical areas of Air Quality, Alternatives, Biological Resources, Land Use, Solid Waste, and Water Resources in Data Request Set 4, filed January 12, 2024 (TN 253870). The data responses were provided timely, but are incomplete or insufficient as noted in staff's February 29, 2024, 5th Status Report (TN 254740), as follows:

In Applicant's DRR Set 4 filed on February 12 (TN 254419) it requested an extension to March 11 to provide requested information regarding air

modeling. In another instance, responses to water resources data requests were unsatisfactory; CEC staff is in the process of getting clarification on water supply from Imperial Irrigation District (IID) and has a list of nine questions to be addressed on this issue. Staff will be meeting with IID on March 7, 2024, to better understand how IID's water conservation program can create water and provide it to the project on a long-term basis.

Staff has also been diligent in assessing the Project's potential impacts upon tribal cultural resources. However, due to the scope and complexity of the three projects, the data gathering is still in process. On November 22, 2023, staff met with the Tribal Historic Preservation Office of the Agua Caliente Band of Cahuilla Indians to discuss the three geothermal projects. On February 26, 2024, additional consultation was held in person, and included the applicant, tribal representatives, and CEC staff. This meeting led to action items that require further action, and the extent of the analysis of the project impacts on cultural and tribal cultural resources will not be complete until consultation activities are complete. Staff estimates these will be complete by the end of May 2024.

Staff also recently received new, unanticipated, and relevant information regarding the underlying geothermal resource. On February 26, 2024, Cyrg, operator of the Hudson Ranch Power 1 geothermal plant, currently operating adjacent to the proposed MBGP, filed a technical report written by Geothermal Resource Group, a geothermal consulting firm, regarding the geothermal resource common to all projects. (TN 254691) This report makes specific statements and provides evidence to support previously undisclosed impacts on the Hudson Ranch facility and the geothermal resource generally due to MBGP's proposed well locations and facility size. Upon preliminary review, staff concludes the information in the report requires thorough evaluation and has the potential to require staff to seek additional information. Staff has provided the information to the California Geologic Energy Management Division (CalGEM) for expertise and guidance on verifying the described impacts on the resource. This new, unanticipated, and relevant information requires additional staff time to evaluate, verify, and incorporate into its analysis as appropriate.

Staff also is expected to receive detailed waste discharge requirements (WDRs) from the Regional Water Quality Control Board (RWQCB) towards the beginning of April 2024. These WDRs are necessary to incorporate the requirements of the RWQCB had the board been issuing a permit and will need to be integrated into the Water Resources section of the staff assessment.

As a result of the incomplete responses, complex and comprehensive Cultural and Tribal Cultural resource data gathering activities, and new, non-party information filed in the docket, substantial new information must be verified, and additional research and data gathering from third parties is now required.

Once the data are fully collected and verified, impacted sections can be completed. After technical experts draft the PSA, it must undergo staff quality review and managerial approval. For these reasons, staff historically requires 60 days to publish its PSA after determining it has all the information necessary to fully analyze the impacts of the project.

On March 12, 2024, counsel for staff met with counsel for all other parties regarding this motion. On behalf of CURE and UAW, their counsel concurred with staff's proposed revisions to the Scheduling Order to reflect a due date for the PSA in Morton Bay to June 25, 2024. All parties concurred with the request to amend the scheduling Order to require a 45-day comment period for the PSA.

### **III. DISCUSSION**

#### **a. Request to Amend Scheduling Order Event Number 4 Regarding the Due Date for the Preliminary Staff Assessment**

Under California Code of Regulations, title 20, section 1203, the presiding member of a committee has the authority to:

Regulate the conduct of the proceedings and hearings, including, but not limited to, disposing of procedural requests, ordering the consolidation or severance of any part, or all, of any proceeding or hearing, admitting or excluding evidence, designating the subject matter, scope, time of presentation, and order of appearance of persons making oral comments or testimony, accepting stipulations of law or fact, and continuing the hearings.

A committee's authority to regulate the proceeding includes the authority to modify any deadlines set by the committee. As such, the committee may adjust the established due dates in the Scheduling Order. Revision is necessary for staff to complete its analysis.

Importantly, Cultural and Tribal Cultural Resources consultations are on-going, and the large area impacted by all three geothermal projects combine to create complex and interrelated impacts, necessitating the careful evaluation and organization of significant amounts of relevant information.

Despite timely and diligent issuance of data requests, and initiation of Cultural and Tribal Cultural Resources consultation, staff has not yet received necessary information to permit thorough evaluation of the impacts of the project. Unexpected and complicating factors include applicant's revision of the project description filed November 17, 2023 (TN 253188), a new filing from an impacted nearby facility regarding the capacity of the geothermal resource, ongoing and incomplete cultural and tribal cultural consultation, and ongoing concerns regarding water supply which impact multiple technical sections of the PSA. In addition, the applicant did not provide a delayed air modeling report until March 8, 2024 (TN (254937)).

Based on the uncertainty related to these factual matters, and their additional relevance to the Alternatives section, staff estimates it can complete the PSA for the Project by June 25, 2024. This date reflects an anticipated date to complete information gathering by mid-April, provides staff the customary 60-days following data completeness to finalize the drafts and circulate for supervisory review and approval, and then post for public comment.

### **Request for 45-Day Comment Period**

The Scheduling Order directs staff to provide a 30-day comment period for review of the Preliminary Staff Assessment pursuant to California Code of Regulations, title 20, section 1742(c).

The Warren Alquist Act contains a Certified Regulatory Program for permitting thermal power plants through the processing of AFCs. (Cal. Pub. Resources Code, §§ 25519(c) and 21080.5.)

Public Resources Code section 21080.5(c) states, “A regulatory program certified pursuant to this section is exempt from Chapter 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150) and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 4.5.”

Public Resources Code, sections 25519 through 25541.5 and the CEC’s regulations implementing those sections, govern the AFC proceedings. The remaining sections of CEQA not exempted by section 21080.5(c) continue to apply in the AFC proceeding, including Public Resources Code, Chapter 2.6: General, section 21091. Section 21091 (a) was amended in 2021 (AB 819, Levine, Stats 2021, ch. 97) to clarify that lead state agency EIRs require a comment period at least 45-days long. That provision now states, in relevant part:

...If the draft environmental impact report is for a proposed project where the state agency is the lead agency, a responsible agency or a trustee agency; a state agency otherwise has jurisdiction by law with respect to the project; or the proposed project is of sufficient statewide, regional, or areawide significant as determined pursuant to the guidelines certified and adopted pursuant to Section 21083, the review period shall be at least 45 days...

California Code of Regulations, title 20, section 1742, subdivision (c), requires a minimum 30-day comment period for review of a Preliminary Staff Assessment. However, *Ultramar, Inc. v South Coast Air Quality Management District* (1993) 17 Cal.App.4th 689, 698-700, clarifies that the environmental assessment within a Certified Regulatory Program is included within the term “environmental impact report” in Section 21091, and that section 21091 applies to Certified Regulatory Programs. Since the PSA is CEC’s EIR equivalent, and CEC is a lead state agency, section 21091, by its terms, applies to CEC’s PSAs. In addition, state agencies such as CalGEM have an interest in reviewing the PSA.

Although California Code of Regulations, title 20, section 1742(c), as referenced in the Scheduling Order, does require a minimum of 30 days for a comment period for a PSA for an AFC, this regulation can be read consistently with the 2021 amendment to the statute since the regulation only sets a minimum, and not a maximum, review period. The CEQA statute establishes a longer minimum public comment period than the pre-existing CEC regulation, but the committee may still order a comment period of 45 days or longer and remain compliant with both the CEC regulations and CEQA. Both Applicant's (TN 254749) and CURE's (254750) Status Report No. 5, filed February 29, 2024, concurred with staff's preference for a 45-day comment period.

Therefore, staff requests that the committee order a 45-day comment period for the MBGP PSA.

#### **IV. CONCLUSION AND ORDER**

Given the outstanding need for additional data that is crucial to staff's environmental analysis of the Project, staff seeks an order from the committee to amend the Project's Scheduling Order Event Number 4 regarding the due date for the PSA to June 25, 2024. Staff also requests that the committee order a 45-day comment period for the MBGP PSA, consistent with the California Environmental Quality Act (Cal. Pub. Resources Code, § 21091(a).)

Dated: 3/13/24

/s/ \_\_\_\_\_

Kari Anderson

Office of the Chief Counsel  
California Energy Commission