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THE STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

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

Docket No. 23-AFC-03

**BLACK ROCK GEOTHERMAL LLC’S PARTIAL OPPOSITION TO
CALIFORNIA ENERGY COMMISSION STAFF’S MOTION TO
EXTEND THE DUE DATE FOR THE PRELIMINARY STAFF ASSESSMENT**

Pursuant to Section 1211.5 of the California Energy Commission’s (“CEC” or “Commission”) regulations,¹ Black Rock Geothermal LLC (“the Applicant”) submits this partial opposition to the CEC Staff’s *Motion to Extend the Due Date for the Preliminary Staff Assessment and the Public Comment Period* (“Staff’s Motion”) filed on March 13, 2024.²

Staff’s Motion seeks to (1) extend the due date of the Preliminary Staff Assessment (“PSA”) for the Black Rock Geothermal Project (“BRGP”) until July 9, 2024, and (2) to revise the duration of the comment period on the PSA to 45 days. As set forth below, the Applicant objects to the nearly three-month extension proposed in Staff’s Motion and proposes that a more moderate extension to May 14, 2024 be adopted by the Committee. Finally, as stated in Status Reports No. 4 and 5, while the Applicant does not agree that a 45-day comment period on the PSA is required by either the California Environmental Quality Act (“CEQA”) or the CEC’s regulations, the Applicant does not object to Staff’s proposed 45-day comment period.³

I. THE PROPOSED THREE-MONTH EXTENSION IS INCONSISTENT WITH THE 12-MONTH CERTIFICATION PROVISIONS SET FORTH IN THE WARREN-ALQUIST ACT.

Public Resources Code Section 25540.2 and Section 1803, Title 20 of the California Code of Regulations provides that the Commission shall issue its decision on an application for

¹ California Code of Regulations, Title 20, Chapter 2.

² TN#: 255052.

³ TN#: 254265, 254753.

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certification (“AFC”) within 12 months of the acceptance of the application. The Commission accepted the AFC for the BRGP on July 27, 2023,⁴ and the Scheduling Order issued by the Committee provided for publication of the PSA as early as January 22, 2024. While delayed publication of the Preliminary Determination of Compliance may have impacted the timing for the PSA’s analyses of Air Quality and Public Health, Staff’s proposed PSA publication date of July 9, 2024, is unreasonable given the “preliminary” nature of the PSA and is wholly inconsistent with the 12-month certification provisions set forth in the Warren-Alquist Act. Instead, the Applicant proposes a more moderate extension to May 14, 2024, which balances Staff’s need for additional time to prepare the PSA and the Warren-Alquist Act’s mandate for timely processing of an AFC.

II. THE FACTORS SET FORTH IN STAFF’S MOTION DO NOT SUPPORT THE LENGTHY EXTENSION REQUEST.

Staff’s Motion primarily identifies four factors as impacting the timely publication of the PSA: ongoing cultural and tribal cultural consultations; the project refinements docketed by the Applicant on November 17, 2023,⁵ a public comment docketed in another proceeding discussing the geothermal resource; and concerns regarding water supply. As described in further detail below, none of these factors justify the extensive delay to the PSA publication date currently proposed by CEC Staff.

A. Ongoing Cultural and Tribal Resources Consultation Should Not Delay Publication of the PSA.

Staff’s Motion identifies ongoing cultural and tribal resources consultation as one factor requiring a delayed PSA publication date. The Applicant recognizes and supports the importance of meaningful tribal consultation and continues to engage in its own discussions and consultations with local tribes. It is also important to recognize that the AFC proceeding is an iterative process, and the PSA is intended to be just that – a *preliminary* assessment by Staff of the BRGP based on the information available at the time the PSA is prepared.⁶ Extensive cultural resources information was prepared and submitted as part of the AFC and in response to

⁴ TN#: 251221.

⁵ Note that the Air Quality and Public Health analysis for these refinements were actually provided several days prior, on November 13, 2023 (TN#: 253080).

⁶ For example, see Preliminary Staff Assessment for the Alamos Energy Center, p. 1-1.

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data requests.⁷ Consistent with prior AFC proceedings, the PSA should be prepared with the information available at the time the PSA is compiled. To the extent that consultations are ongoing, that fact can be recognized directly in the PSA, and any subsequent information arising from either additional consultations or public comments analyzed and incorporated in the Final Staff Assessment for the BRGP. This approach is consistent with the Warren-Alquist Act's mandate for a 12-month licensing proceeding and prior CEC AFC proceedings.⁸

B. The Applicant Simply Refined the Project Description and Did Not Revise It.

Staff's Motion also identifies the project refinements docketed by the Applicant on November 17, 2023 as another factor warranting a delayed PSA publication date. It is important to recognize that the Applicant did not revise the project description, but simply refined the orientation, placement, number, and type of specific pieces of equipment on the BRGP site.⁹ Significantly, this is the exact process envisioned by the Warren-Alquist Act: a project is refined and improved through stakeholder interactions as it proceeds forward in the statutory 12-month process.

In this case, the refinements improved the project by decreasing the potential impacts from the BRGP, including, for example, reducing the number of emergency diesel generators on the site and improving the chemical storage locations.¹⁰ These project refinements occur entirely within the proposed site for the BRGP, and did not require new or additional biological resources or cultural resources surveys. Most importantly, the refinements only required new modeling for two technical areas – Air Quality and Public Health. The refinements did not otherwise affect the environmental analysis in the AFC and required only minor updates to one table in the Hazardous Materials section of the AFC, three visual simulations, and figures in the executive

⁷ See Data Requests ("DR") Set 1 # 27-35 (TN#: 252492-1); DR Set 1a, #32 (TN#254533); DR Set 2, #1-4 (TN# 252807); DR Set 3, #1-6 (TN# 253705).

⁸ For example, see Preliminary Staff Assessment for the Mission Rock Energy Center, p. 1-9 (TN#: 221860).

⁹ TN#: 253189, p. 1.

¹⁰ TN#: *Id.*

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summary and project descriptions sections of the AFC.¹¹ These refinements do not warrant a nearly three-month extension of the entire PSA publication date.¹²

Further, as noted in the Applicant's Status Report No. 5, the air quality modeling which the Applicant requested an extension for is not necessary or required to complete the PSA. This information is supplemental to the previously submitted air quality impact assessment, which already presents a conservative estimate of the potential emissions from the BRGP.

**C. Public Comments Filed in Another Proceeding Relating to A Different Project
Are Not Relevant to the BRGP.**

Staff's Motion cites to public comments docketed in the Morton Bay Geothermal Project ("MBGP") proceeding (23-AFC-01) "regarding the capacity of the geothermal resource"¹³ as being another factor justifying a nearly three-month delay in publication of the PSA. However, it is important to recognize that the public comments are limited only to the MBGP, have no relevance to the BRGP, and do not justify a delay in the publication of the PSA for the BRGP.

Furthermore, the Commission has already determined that the site is reasonably capable of providing geothermal resources in commercial quantities, and recognized that a simulated forecast "demonstrates that the resource can accommodate both existing geothermal power plants, and the proposed geothermal power plants including Black Rock, Elmore North, and Morton Bay over the horizon of the evaluation through 2065."¹⁴ The California Geologic Energy Management Division which oversees the drilling, operation, and maintenance of geothermal wells across California prepared testimony certifying the adequacy of the geothermal resource underlying the BRGP.¹⁵ Further, CEC Staff provided testimony that its independent review confirmed that it "is reasonable to expect the proposed project would maintain its gross

¹¹ TN#: 253189.

¹² Of course, the Committee retains plenary authority to order the Staff to publish the PSA in two parts if deemed prudent as Committees have done in the past.

¹³ TN#: 255052, p. 4. The public comments are available at TN#: 254691.

¹⁴ TN#: 250454, p. 3. It is also important to note that the Applicant does not agree with, or accept as correct or factual in any way, the public comments filed by Hudson Ranch Power 1 (TN#: 254691).

¹⁵ TN#: 250205.

generating capacity for the project's life."¹⁶ This issue has already been settled by order of the Commission and does not justify an extensive delay to the publication date of the BRGP PSA.

D. The Applicant has Provided Accurate and Timely Information Regarding Water Resources.

Staff's Motion vaguely identifies "ongoing concerns regarding water supply" as a factor justifying the delayed PSA publication date. As with the other technical areas, CEC Staff has sufficient information to publish its initial analysis with respect to Water Resources. As acknowledged in Staff's Motion, the draft water supply assessment has been prepared and provided to the Imperial Irrigation District ("IID") and CEC Staff. The Applicant provided further water resources data responses to CEC Staff, and consulted with IID in the preparation of the data responses. As with the tribal and cultural resources section of the PSA, CEC Staff has sufficient information with which to prepare its preliminary analysis. Any further information from the final Water Supply Assessment or needed in responses to public comments can, and should, be incorporated into the Final Staff Assessment.

III. THE APPLICANT DOES NOT OBJECT TO THE PROPOSED 45-DAY COMMENT PERIOD.

As described in the Applicant's Status Reports No. 4 and 5, while not required by law given the Commission's approved certified regulatory program, the Applicant does not object to the proposed 45-day comment period on the PSA. The Applicant notes that while the Court in *Ultramar, Inc. v South Coast Air Quality Management District*¹⁷ found that certified regulatory program to be subject to the comment periods set forth in Public Resources Code section 21091, the Court in *Ross vs. California Coastal Commission*¹⁸ reached the opposite conclusion. Specifically, the Court in *Ross* found that the Coastal Commission's certified regulatory program was not subject to the specific comment periods set forth in Public Resources Code section 21091 and distinguished the *Ultramar* case on the basis that the agency had specifically opted to utilize CEQA's "implementation guidelines" and was obligated to use CEQA guidelines and accompanying comment periods.¹⁹

¹⁶ TN#: 250071, p. 2.

¹⁷ *Ultramar, Inc. v. South Coast Air Quality Management Dist.* (1993) 17 Cal.App.4th 689, 698-700.

¹⁸ *Ross v. California Coastal Com.* (2011) 199 Cal.App.4th 900.

¹⁹ *Ross v. California Coastal Com.* (2011) 199 Cal.App.4th 900, 936.

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IV. CONCLUSION

For the reasons set forth above, the Applicant objects to the BRGP PSA publication date of July 9, 2024 proposed in Staff's Motion. However, the Applicant would not object to a more moderate extension to May 14, 2024. Finally, the Applicant does not object to the proposed 45-day comment period proposed in Staff's Motion.

March 27, 2024

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