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STATE OF CALIFORNIA
STATE ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

BLACK ROCK GEOTHERMAL PROJECT
(BRGP) APPLICATION FOR
CERTIFICATION

Docket No. 23-AFC-03

**CALIFORNIA UNIONS FOR RELIABLE ENERGY'S RESPONSE IN
SUPPORT OF THE CALIFORNIA ENERGY COMMISSION STAFF'S
MOTION TO EXTEND THE DUE DATE FOR THE PRELIMINARY STAFF
ASSESSMENT AND THE PUBLIC COMMENT PERIOD**

March 27, 2024

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INTRODUCTION

Pursuant to California Code of Regulations, title 20, § 1211.5(a), California Unions for Reliable Energy (“CURE”) submits this response in support of the California Energy Commission (“CEC”) Staff’s Motion to Extend the Due Date for the Preliminary Staff Assessment and the Public Comment Period (“Motion”) in the Black Rock Geothermal Project (“BRGP”) proceeding (Docket No. 23-AFC-03), served on March 13, 2024 (TN 255052).

The Motion seeks to amend the Presiding Member’s Scheduling Order (TN 252289) in two respects. First, Staff requests an extension of the deadline for the Preliminary Staff Assessment (“PSA”) to July 9, 2024. Second, Staff requests an extension of the public comment period for the PSA from 30 to 45 days. CURE supports Staff’s requests as the extensions promote more efficient, economical, and effective adjudication of the application for certification and ensure the Commission complies with its obligations under the California Environmental Quality Act.

DISCUSSION

I. The Committee Should Extend the Due Date for the Preliminary Staff Assessment

CURE supports an extension of the date to release the PSA to provide Staff with more time to collect and evaluate additional information necessary for a complete evaluation of the BRGP. Staff specifically cites revisions to the project description, on-going cultural and tribal cultural resources consultations, delayed release of a final water supply assessment, unanticipated information regarding the underlying geothermal resources, and outstanding responses to data requests on air

quality, biological resources, land use, solid waste, and water resources (TN 255052 at p. 4). This information is critical to a full and adequate evaluation of the Project's environmental impacts, mitigation measures, and alternatives.

Moreover, Staff will need additional time to evaluate revisions made by Imperial County Air Pollution Control District ("Air District") in response to comments on the preliminary determination of compliance ("PDOC"). CURE identified numerous deficiencies with the Air District's air quality impact and health risk analyses, including violations of California and National Ambient Air Quality Standards and significant, unmitigated health risks from toxic air contaminants (TN 255266). Experts from Comite Civico del Valle's Lithium Valley Equity Technical Advisory Group also raised significant concerns with the PDOC (TN 255259).

While Staff does not request bifurcation of the PSA, CURE urges against dividing the PSA into multiple volumes. Allowing some environmental issues to proceed through a separate public review and comment period before others would create further delays, expenses, and inefficiencies. It would also deprive the public of facts and analysis in non-released sections of the PSA that inform released sections of the PSA and would result in a higher risk of inconsistencies.

Finally, an earlier deadline than the one requested by Staff is not appropriate given that Staff does not anticipate completing its information gathering by mid-April, and Staff will need sufficient time to draft and finalize the PSA before releasing it for public comment (TN 255052 at pp. 4-5).

In sum, CURE urges the Committee to grant Staff's request to extend the deadline to release the PSA to July 9, 2024.

II. The Committee Should Authorize a 45-Day Public Comment Period for the PSA

Staff requests that the Committee modify the Scheduling Order to extend the public review and comment period from 30 to 45 days. CURE supports Staff's request. In fact, no party objects to an extended comment period, including the Applicant (TN 254753 ["As stated before, the Applicant does not object to CEC Staff's proposal for a 45-day comment period on the BRGP PSA."]).

Authorizing an additional 15 days for public review is consistent with Public Resources Code section 21091, which mandates that the review period for environmental impact reports be at least 45 days when the lead agency is a state agency. CURE concurs with Staff's analysis of Section 21091's application to certified regulatory programs (TN 255052 at p. 5). The Commission should authorize a public comment period that is equivalent to the minimum amount of time required for review of environmental impact reports issued by state agencies (see Pub. Res. Code § 21091(a)).

Additionally, a 45-day comment period is warranted due to unusual circumstances. For example, the Commission is processing this geothermal AFC application simultaneously with two other geothermal AFC applications, all submitted by the same Applicant. The three geothermal projects affect multiple interrelated sites at various locations in the same general area. Moreover, there has been no initial study which contains the analysis of environmental resources

with less-than-significant impacts. Beyond discrete issues addressed in the PDOC, the PSA will be the first opportunity for members of the public to provide comments on the substantive analysis of the Projects' impacts.

In sum, the Committee should grant Staff's request to extend the PSA public comment period to 45 days.

CONCLUSION

An extension of time to prepare the PSA is appropriate given the extent of new and unanticipated information Staff must obtain, evaluate, and incorporate into the PSA since the close of discovery. In addition, an extension of the PSA comment period is reasonable given that no party objects and a 45-day public comment period would be consistent with the minimum requirements for review of environmental impact reports prepared by state agencies. CURE respectfully urges the Committee to grant Staff's extension requests.

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Respectfully submitted,

Original Signed by:

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