

**DOCKETED**

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**CALIFORNIA ENERGY COMMISSION**

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CEC-70 (Revised 7/2022)



*APPLICATION FOR CERTIFICATION  
FOR THE:*

*Morton Bay Geothermal Project*

Docket No. 23-AFC-01

## **ORDER GRANTING STAFF'S MOTION FOR EXTENSION OF TIME TO FILE, AND COMMENT ON, THE PRELIMINARY STAFF ASSESSMENT**

On March 13, 2024, California Energy Commission (CEC) Staff (Staff) filed a motion requesting an order extending its time to file its Preliminary Staff Assessment (PSA) in this proceeding to June 25, 2024, and extending the time to review and comment on the PSA from 30 to 45 days (Motion).<sup>1</sup> As ordered below, Staff's Motion is **GRANTED** with the additional direction to Staff to file a complete PSA as soon as reasonably possible but no later than June 25, 2024. Except as provided otherwise herein, the scheduling order for this proceeding, filed on September 15, 2023, remains in effect.<sup>2</sup>

### **BACKGROUND**

On April 18, 2024, Morton Bay Geothermal LLC (Applicant), an indirect, wholly owned subsidiary of BHE Renewables, LLC, filed an AFC with the CEC seeking certification to construct and operate the Morton Bay Geothermal Project (Morton Bay, or Project).<sup>3</sup> The Project would be a geothermal electrical generating facility and related facilities southeast of the Salton Sea, in unincorporated Imperial County, California near the cities of Niland and Calipatria. The CEC deemed the AFC complete on July 27, 2023.<sup>4</sup>

<sup>1</sup> The AFC and all filed documents related to the Morton Bay proceeding are available via the "Docket Log (23-AFC-01)" link on the [Morton Bay proceeding's web page](https://www.energy.ca.gov/powerplant/steam-turbine/morton-bay-geothermal-project-mbgp) at <https://www.energy.ca.gov/powerplant/steam-turbine/morton-bay-geothermal-project-mbgp>. Staff's motion is TN 255054.

<sup>2</sup> TN 252284.

<sup>3</sup> The application comprises many separate documents filed in the docket beginning April 18, 2023, e.g., Volume 1 is TN 249723.

<sup>4</sup> TN 251219.

On August 25, 2023, the Presiding Member of the Committee<sup>5</sup> (Presiding Member) granted a petition to allow California Unions for Reliable Energy (CURE) to intervene as a party to the proceeding.<sup>6</sup>

On August 31, 2023, the Committee held an Informational Hearing and Scoping Meeting in Calipatria, California. On September 15, 2023, the Presiding Member issued a scheduling order for the proceeding.<sup>7</sup> The scheduling order required, among other things, that Staff file its PSA no later than 60 days after the Imperial County Air Pollution Control District filed its Preliminary Determination of Compliance (PDOC). The PDOC for the Project was filed on February 2, 2024, which resulted in Staff's PSA becoming due on April 2, 2024. The scheduling order set the deadline for any party to request information using formal discovery for January 22, 2024.<sup>8</sup> The scheduling order set a 30-day public comment period for Staff's PSA and required all parties to file a status report on the last business day of every month. On October 30, 2023, the Presiding Member issued General Orders regarding motions, electronic filing, and other matters.<sup>9</sup>

On March 5, 2024, the Presiding Member granted a petition to allow United Automobile, Aerospace and Agricultural Implement Workers of America, Region 6 (UAW) to intervene as a party to the proceeding.<sup>10</sup>

#### **A. STAFF'S MOTION FOR EXTENSION OF TIME TO FILE, AND COMMENT ON, THE PSA**

As noted above, on March 13, 2024, Staff filed its Motion requesting an order extending its time to file its PSA in this proceeding to June 25, 2024, and extending the time to review and comment on the PSA to 45 days.<sup>11</sup> Staff's Motion claims the extension of time to file the PSA is justified because, despite Staff's diligent efforts, unexpected and complicating factors have delayed Staff's completion of the PSA, including its analysis of several topic areas such as tribal cultural resources, water supply, alternatives, cumulative resources, and other relevant topics. According to Staff, these unexpected and complicating factors include the following:

- Applicant filed a revision of the project description on November 17, 2023.

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<sup>5</sup> On June 1, 2023, the California Energy Commission (CEC) assigned a committee to this proceeding to consist of Noemí Gallardo, Commissioner and Presiding Member, and Andrew McAllister, Commissioner and Associate Member, to preside over any proceedings arising from the Application. (TN 250451.)

<sup>6</sup> TN 251919.

<sup>7</sup> TN 252284.

<sup>8</sup> "All requests for information shall be submitted no later than 180 days from the date the commission determines an application is complete, unless the committee allows requests for information at a later time for good cause shown." (Cal. Code Regs., tit. 20, § 1716(e).)

<sup>9</sup> TN 252841.

<sup>10</sup> TN 254840.

<sup>11</sup> TN 255054.

- Applicant submitted a delayed air modeling report on March 8, 2024, and Staff requires additional time to incorporate this report into the PSA.
- Staff timely initiated tribal consultation, which is taking longer than anticipated and could take until the end of May 2024 to conclude.
- Staff is still investigating water supply matters, including consultation with Imperial Irrigation District, which Staff claims is necessary due to unsatisfactory data from Applicant.
- A third-party filed a report raising new information and concern about the adequacy of geothermal resources on February 26, 2024,<sup>12</sup> requiring Staff to evaluate the report, including the need to consult the California Geologic Energy Management Division (CalGEM).
- Staff must do cumulative impact analyses that involve “complex and interrelated” considerations involving two additional separate proposed geothermal projects.

Staff’s Motion states that to prepare the PSA, it must carefully evaluate and organize a significant amount of data.

Moreover, Staff’s Motion claims that extending the time to review and file comment on the PSA to 45 days is required by law,<sup>13</sup> and is appropriate because state agencies, such as CalGEM, have an interest in reviewing the PSA.

Staff’s Motion states that intervenors, CURE and UAW, support Staff’s proposed extension of time to file the PSA. Staff’s Motion states no party opposes extending the time to review and comment on the PSA from 30 to 45 days.

## **B. APPLICANT’S PARTIAL OPPOSITION TO STAFF’S MOTION**

On March 27, 2024, Applicant filed a partial opposition to Staff’s Motion (Partial Opposition), which opposes Staff’s request for a nearly three-month extension for Staff to file its PSA, but proposes a shorter extension of four-weeks in the alternative.<sup>14</sup> Applicant’s partial opposition also confirms that Applicant has no objection to Staff’s request to extend the review and comment period on the PSA from 30 to 45 days, but disagrees that a 45-day comment period is required by law.<sup>15</sup>

Applicant’s partial opposition states that Applicant objects to Staff’s request for a nearly three-month extension because the additional time would be inconsistent with the CEC’s 12-month AFC process.<sup>16</sup> It also states that the factors raised by Staff to support its Motion do not justify a nearly

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<sup>12</sup> TN 254691.

<sup>13</sup> Citing Pub. Resources Code, §§ 21080.5(c), 21091; and *Ultramar, Inc. v South Coast Air Quality Management District* (1993) 17 Cal.App.4th 689, 698-700.

<sup>14</sup> TN 255305.

<sup>15</sup> Citing *Ross v. California Coastal Com.* (2011) 199 Cal.App.4th 900 (distinguishing *Ultramar, supra*, 17 Cal.App.4th 689 and reaching the opposition conclusion).

<sup>16</sup> Citing Pub. Resources Code, § 25540.2; and Cal. Code Regs., tit. 20, § 1803.

three-month extension because Staff already has the information it needs to prepare the PSA for the following reasons:

- Applicant did not revise the project description on November 17, 2023, but merely refined the orientation, placement, number, and type of specific pieces of equipment within the Project site, which required only minor updates to the AFC and limited new modeling for Air Quality and Public Health.
- The air quality modeling for which the Applicant requested an extension to respond is not required to complete the PSA but is merely supplemental to previously submitted information.
- Staff already has extensive data on tribal cultural resources, and additional information from continuing tribal consultation is not required for the PSA and would be incorporated into the final staff assessment.
- Staff has sufficient data about water supply to complete the PSA and any additional data, such as from the final water supply assessment, would be adequately addressed in the later final staff assessment.
- No further investigation of the adequacy of the geothermal resource is required to prepare the PSA because the CEC already decided that geothermal resources are adequate to support the generating capacity of the Project.

### **C. CURE'S RESPONSE TO STAFF'S MOTION**

On March 27, 2024, CURE filed a response supporting the extensions requested in Staff's Motion.<sup>17</sup>

## **DISCUSSIONS AND ORDER**

The Presiding Member may modify the schedule at any time upon either Presiding Member's own motion or the motion of a party.<sup>18</sup> Here, Staff's Motion requests an order extending its time to file its PSA in this proceeding by nearly three months and extending the public review and comment period on the PSA from 30 to 45 days. Each request is addressed in turn below.

### **A. DISCUSSION OF STAFF'S REQUEST TO EXTEND TIME TO FILE ITS PSA**

Based on the totality of the circumstances, the Presiding member finds Staff's request to extend its time to file the PSA is reasonable as set forth below. Staff's Motion demonstrates that Staff received data later than expected and is still pursuing data, at least partly due to events outside of Staff's control, including the following:

- Applicant filed a revision of the project description on November 17, 2023.

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<sup>17</sup> TN 255309.

<sup>18</sup> Cal. Code Regs., tit. 20, § 1203(c).

- Applicant submitted a delayed air modeling report on March 8, 2024, and Staff requires additional time to incorporate this report into the PSA.
- Staff timely initiated tribal consultation, which is taking longer than anticipated and could take until the end of May 2024 to conclude.
- Staff is still investigating water supply matters, including consultation with Imperial Irrigation District, which Staff claims is necessary due to unsatisfactory data from Applicant.
- A third-party filed a report raising new information and concern about the adequacy of geothermal resources on February 26, 2024,<sup>19</sup> prompting Staff to evaluate the report, including by consulting another agency, CalGEM.

Even if, as Applicant's Partial Opposition contends, Applicant's refinement to the project description and air quality modeling were minor and foreseeable under the AFC process, Staff may reasonably need additional time to evaluate and incorporate the new data into the PSA.

Staff's ongoing data collection efforts could uncover additional data relevant to the PSA analyses of tribal cultural resources, water supply, alternatives, cumulative impacts, and other relevant topic areas. Applicant does not deny that Staff could uncover at least some additional data relevant to its analyses. To the extent Applicant disagrees that Staff is pursuing data relevant to the PSA, Applicant has not established that Staff's discretion to decide the relevance of data should be overruled under the circumstances. Among other contentions, Applicant contends that additional geothermal data are irrelevant because the CEC previously determined that geothermal resources were sufficient for purposes of Public Resources Code section 25540.2.<sup>20</sup> However, CEC's prior Section 25540.2 determination does not foreclose the ongoing relevance of new data regarding the adequacy of geothermal resources. The issues Staff raises would not necessarily be individually relevant to completing its PSA, but collectively show that Staff's ongoing data collection efforts could uncover additional data Staff determines to be relevant to completing the PSA.

Staff's request for an extension is reasonable to the extent Staff determines it needs the time to file a complete PSA. A complete PSA will promote efficiency and avoid delay by uncovering any disputed issues earlier and thus by helping to resolve them before the evidentiary hearing. Similarly, a more complete PSA would promote public transparency by providing a complete analysis for public and agency comment earlier in the proceeding. Applicant's suggestion to publish the PSA before Staff can incorporate certain later-acquired data, then incorporate the data later in the final staff assessment could have the opposite effect and delay the proceeding by expanding the issues required to be resolved during later phases of the proceeding, and thus should be

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<sup>19</sup> TN 254691.

<sup>20</sup> TN 250451.

avoided if reasonably possible. Thus, under these circumstances, Staff may pursue data that Staff determines to be necessary to complete its PSA, which warrants granting a reasonable extension.

Staff's request for a nearly three-month extension to file its PSA appears to be a reasonable deadline, but Staff is directed to file a complete PSA as soon as reasonably possible. Applicant's Partial Opposition contends that even if additional time is required, the nearly three-month extension is unreasonable and is inconsistent with the Warren-Alquist Act, which provides for certification of certain geothermal facilities within 12-months or as mutually agreed.<sup>21</sup> This order only gives Staff the time it determines is necessary to file a complete PSA. Furthermore, as noted above, giving Staff a reasonable extension to complete its PSA will not necessarily delay the ultimate decision in the proceeding, but may avoid potential delay later by identifying and resolving potential issues earlier. The extension granted below is reasonable and consistent with the Warren-Alquist Act. However, the Presiding Member is not inclined to consider any additional future motion for extension to file the PSA unless new unforeseen significant circumstances arise.

## **B. DISCUSSION OF STAFF'S REQUEST TO EXTEND THE REVIEW AND COMMENT PERIOD OF THE PSA FROM 30 TO 45 DAYS**

No party opposes Staff's request to extend the public review and comment period on the PSA from 30 to 45 days, thus, the Presiding Member will grant Staff's Motion. Because Staff's request is granted, there is no need to decide whether a 45-day comment period is required by law.

## **C. ORDER**

The Presiding Member hereby **GRANTS** Staff's Motion extending its time to file its PSA in this proceeding to June 25, 2024, and extending the public review and comment period on the PSA from 30 to 45 days. Additionally, the Presiding Member directs Staff to file a complete PSA as soon as reasonably possible.

Except as provided otherwise herein, the scheduling order for the proceeding, filed on September 15, 2023, remains in effect, including, without limitation, that the PSA in this proceeding not be filed within 14 calendar days of the filing of the PSAs in the Elmore North (23-AFC-02) or Black Rock (23-AFC-03) proceedings.<sup>22</sup>

## **PUBLIC ADVISOR AND OTHER CEC CONTACTS**

The CEC's Public Advisor assists members of the public with participating in CEC proceedings. For information on how to participate in this proceeding, please contact the Public Advisor at [publicadvisor@energy.ca.gov](mailto:publicadvisor@energy.ca.gov), or (916) 957-7910. Requests for interpreting services, reasonable

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<sup>21</sup> See Pub. Resources Code, § 25540.2; Cal. Code Regs., tit. 20, § 1803.

<sup>22</sup> TN 252284.

accommodations, and other modifications should be made as soon as possible and at least five days in advance. The CEC will work diligently to meet all requests based on the availability of the service or resource needed.

**Direct questions of a procedural nature** to the assigned Hearing Officers:

Morton Bay: Ralph Lee, (916) 776-3408, [ralph.lee@energy.ca.gov](mailto:ralph.lee@energy.ca.gov).

Chad Oliver, (916) 891-8569, [chad.oliver@energy.ca.gov](mailto:chad.oliver@energy.ca.gov).

**Direct technical subject inquiries** concerning the proceeding to the Project Manager, Eric Veerkamp, at [STEPSiting@energy.ca.gov](mailto:STEPSiting@energy.ca.gov) or (916) 661-8458.

**Direct media inquiries** to [mediaoffice@energy.ca.gov](mailto:mediaoffice@energy.ca.gov) or (916) 654-4989.

### **Availability of Documents**

All documents filed in this proceeding will be posted in the docket by selecting the following link on the [Morton Bay proceeding's web page](https://www.energy.ca.gov/powerplant/steam-turbine/morton-bay-geothermal-project-mbgp) at <https://www.energy.ca.gov/powerplant/steam-turbine/morton-bay-geothermal-project-mbgp>, or scan (use the camera on your mobile device and hold it over the QR code) the following QR code:



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**IT IS SO ORDERED.**

Dated: April 9, 2024

***APPROVED BY:***

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Noemí Otilia Osuna Gallardo  
Commissioner and Presiding Member of the Morton Bay  
Committee