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| <b>Docket Number:</b>   | 23-AFC-03   |
| <b>Project Title:</b>   | Black Rock Geothermal Project (BRGP)                            |
| <b>TN #:</b>            | 258382  |
| <b>Document Title:</b>  | CURE Proposed Schedule - Black Rock Geothermal Project (8-7-24) |
| <b>Description:</b>     | N/A   |
| <b>Filer:</b>           | Alisha Pember   |
| <b>Organization:</b>    | California Unions for Reliable Energy                           |
| <b>Submitter Role:</b>  | Intervenor  |
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| <b>Docketed Date:</b>   | 8/7/2024  |

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

IN THE MATTER OF:

BLACK ROCK GEOTHERMAL PROJECT  
APPLICATION FOR CERTIFICATION

Docket No. 23-AFC-03

**CALIFORNIA UNIONS FOR RELIABLE ENERGY**  
**PROPOSED SCHEDULE FOR AFC PROCEEDING**

August 7, 2024

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## INTRODUCTION

California Unions for Reliable Energy (“CURE”) submits this proposed schedule in the Black Rock Geothermal Project (“BRGP”) proceeding (Docket No. 23-AFC-03) pursuant to the *Joint Order Extending and Consolidating Public Comment Periods on the Preliminary Staff Assessment and Further Orders* filed on July 26, 2024 (“Joint Order”) (TN 258081). In its Joint Order, the Presiding Member for the Committees ordered the parties to meet and confer, and for California Energy Commission (“Commission”) Staff and Project Applicants to prepare a proposed schedule for the remainder of each proceeding and file it in the respective docket for each Proposed Project no later than August 7, 2024 (*Ibid.*). The Joint Order permitted all other parties to file a proposed schedule by August 7 (*Ibid.*).

## DISCUSSION

CURE participated in an all-party meet and confer on August 5, 2024 to discuss scheduling related issues for the BRGP, Elmore North Geothermal Project (“ENGP”), and Morton Bay Geothermal Project (“MBGP”). From CURE’s perspective, these discussions highlighted what is already apparent - the three projects present significant schedule-related challenges due to the simultaneous processing, the commonality in areas of concern, and the overlap in parties, experts, and personnel involved. In addition, while there are substantial similarities between the projects, critical distinctions necessitate site-specific and project-specific discussions and evaluation. CURE acknowledges the need for timely decisions but emphasizes the importance of adhering to the broad policy goals and

substantive standards of the California Environmental Quality Act, as outlined in Public Resources Code, §§ 21000 and 21002.

In the Presiding Member's initial Scheduling Order, the Committee indicated it would "establish the schedule and dates for the FSA [Final Staff Assessment] and evidentiary phase of the proceeding upon Staff's filing of the PSA [Preliminary Staff Assessment] and any responses filed by the Applicant or Intervenors." (TN 252289). To facilitate development of the next phase, the Scheduling Order stated that the Committee expected that an FSA would be filed within 30 days after the close of the public comment period; however, if extraordinary circumstances would prevent compliance with this expectation, the Committee ordered Staff to explain why it would need more time to file the FSA and identify "what, if any, additional information Staff needs in order to produce the FSA," and provided the Applicant and Intervenors with 14 days to respond to these statements. (*Ibid.*)

Extraordinary circumstances may already exist to warrant extending the time to file an FSA. Once PSA comments are received, Staff will need adequate time to review the comments received and prepare written responses to comments that raise significant environmental issues pursuant to California Code of Regulations, title 20, § 1742(c), and Public Resources Code, § 21091. It is critical that Staff be provided with sufficient time to develop complete responses as the failure of a lead agency to adequately respond to comments raising significant environmental issues before approving a project frustrates CEQA's informational purpose and may render

the FSA legally inadequate. *See Flanders Found. v. City of Carmel-by-the-Sea* (2012) Cal.App.4th 603, 615.

There is also the possibility that significant new information may be added to the staff assessment such that recirculation of the PSA may be required. *See Joy Rd. Area Forest & Watershed Ass'n v. Department of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 667 (holding recirculation provisions apply to certified regulatory programs). Comments submitted by the Imperial Irrigation District in the Elmore North proceeding (“IID”), dated July 23, 2024, explain that the PSA must be revised to incorporate the ENGP Water Supply Assessment, an assessment on the Salton Sea impacts, and a more robust assessment of cumulative impacts. (TN 257957) IID’s comments also state that the current System Impact Study is “no longer valid, and the project will have to be restudied,” and any improvements or mitigation “should be included as part of the project for environmental assessment purposes.” (Ibid.) These comments apply equally to BRGP.

Moreover, consolidating the public comment periods for the three projects into a single deadline complicates the preparation and release of the FSA for each project within 30 days after the close of the comment period due to the overlapping responsibilities of personnel. Finally, additional information may be provided during future workshops, which Staff indicated it intends to hold during and after the PSA comment period.

The foregoing discussion highlights the need for adequate time for Staff to review the PSA comments and workshop information, and determine whether

changes to the PSA require recirculation, before finalizing the FSA and evidentiary hearing phase schedule. CURE therefore recommends that the Committee direct Staff to file a statement at the end of September 2024 that specifies whether the PSA will be recirculated for public review and what, if any, additional information is needed to prepare the FSA, and estimates the FSA release date.

At that time, Staff's statement could also more reasonably set forth a proposed schedule for the remainder of the proceedings. Waiting to set a specific schedule until after PSA comments are submitted would better enable all parties to assess evidentiary hearing phase requirements. It would provide greater clarity on the key areas of dispute, which would inform the scope of evidentiary hearings. Therefore, CURE recommends that, at that time, Staff's statement set forth a proposed schedule for the remainder of the proceedings including, but not limited to, testimony, prehearing conference, evidentiary hearings, briefing, the Presiding Member's Proposed Decision ("PMPD"), the Committee Conference on the PMPD, and the Final Decision. The Applicant and Intervenors should be provided an opportunity to respond to Staff's proposal.

Based on the foregoing discussion, CURE proposes the below schedule for the ENGP, MBGP, and BRGP AFC proceedings.

| <b>Event</b>                           | <b>Timing</b>                |
|--|------------------------------|
| PSAs Workshop #1                       | July 31, 2024-August 1, 2024 |
| PSAs Workshop #2 re Cultural Resources | TBD                          |
| PSAs Workshop #3                       | TBD                          |
| Public Comment Period Closes on PSAs   | September 3, 2024            |

|   |                                     |
|---|-------------------------------------|
| Staff files proposed schedule for recirculation of PSA, release of FSA and evidentiary hearings | End of September 2024               |
| Responses to Staff's proposed schedule  | No later than 14 days after filing  |
| Committee files Scheduling Order  | TBD                                 |
| Staff files ENGP FSA  | TBD                                 |
| Staff files MBGP FSA  | TBD                                 |
| Staff files BRGP FSA  | TBD                                 |
| Opening Testimony   | TBD                                 |
| Reply Testimony   | TBD                                 |
| Prehearing Conference Statement   | TBD                                 |
| Prehearing Conference   | TBD                                 |
| Evidentiary hearing(s)  | TBD                                 |
| Briefing  | TBD                                 |
| Committee Files Presiding Member's Proposed Decision (PMPD)                                     | TBD                                 |
| Public Comment Period Closes on PMPD  | 30 days after date of filing PMPD   |
| Revised PMPD Filed  | TBD, if necessary                   |
| Last Day to File Comments on Revised PMPD   | 15 days after Revised PMPD is filed |
| Committee Conference on PMPD  | TBD                                 |
| Final Decision Adoption Hearing at CEC Business Meeting   | TBD                                 |

Dated: August 7, 2024

Respectfully submitted,

/s/ Kelilah D. Federman

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