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STATE OF CALIFORNIA

STATE ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

IN THE MATTER OF: MORTON BAY GEOTHERMAL PROJECT APPLICATION FOR CERTIFICATION	Docket No. 23-AFC-01
IN THE MATTER OF: ELMORE NORTH GEOTHERMAL PROJECT APPLICATION FOR CERTIFICATION	Docket No. 23-AFC-02
IN THE MATTER OF: BLACK ROCK GEOTHERMAL PROJECT APPLICATION FOR CERTIFICATION	Docket No. 23-AFC-03

**CALIFORNIA UNIONS FOR RELIABLE ENERGY'S RESPONSE TO JOINT
ORDER DIRECTING PARTIES TO MEET AND CONFER AND SUBMIT A
PROPOSED SCHEDULE**

California Unions for Reliable Energy ("CURE") submits this proposed schedule in the Morton Bay Geothermal Project ("Morton Bay"), Elmore North Geothermal Project ("Elmore North"), and Black Rock Geothermal Project ("Black Rock") proceedings pursuant to the Joint Order Directing Parties to Meet and Confer and to Submit a Proposed Schedule ("Joint Order") docketed on September 17, 2024.¹

I. INTRODUCTION

The Joint Order directs the parties for each project to meet and confer by September 24, 2024 regarding a proposed schedule for the remainder of the Elmore North, Morton Bay, and Black Rock proceedings. The Joint Order further directs Staff and the applicants for Elmore North, Morton Bay, and Black Rock to prepare a joint proposed schedule for the remainder of each proceeding and file it in the respective docket for each proposed project no later than September 30, 2024. The

¹ TN # 259193, Joint Order Directing Parties to Meet and Confer and to Submit a Proposed Schedule (Sept. 17, 2024); TN # 259194, Joint Order Directing Parties to Meet and Confer and to Submit a Proposed Schedule (Sept. 17, 2024); TN # 259195, Joint Order Directing Parties to Meet and Confer and to Submit a Proposed Schedule (Sept. 17, 2024).

Joint Order also authorizes other parties to each proceeding to join in the joint proposed schedule, if any, or file separate proposed schedules by the same deadline.

On September 27, 2024, California Energy Commission Staff (“Staff”) and the applicants for the three geothermal projects (collectively “Applicants”) filed Joint Proposed Schedules for the remainder of the proceedings.² While CURE generally agrees with many of the key milestones, there remain several areas of concern.

These three geothermal projects present major schedule-related challenges due to the simultaneous processing, common issues of fact and law, and the involvement of the same parties, experts, and personnel. Moreover, while the projects share substantial similarities, crucial distinctions demand tailored, site-specific and project-specific evaluation. CURE recognizes the importance of timely decisions. However, it is essential that these decisions and projects align with the policy objectives and rigorous substantive standards of all applicable laws, ordinances, regulations and standards. It is also essential to ensure a realistic, efficient, and fair process and to afford the public an adequate opportunity to review and comment. Accordingly, and as set forth in further detail below, CURE provides the following recommendations to the Committee:

- Consolidate the three proceedings after the staggered filing of Final Staff Assessments (“FSAs”);
- Provide adequate time for parties and the public to review and evaluate significant new information on the project description, impacts and mitigation that will be disclosed to the public for the first time in the FSAs.
- Provide adequate time for parties and the public to review and address highly technical and other responses to comments;
- Set an intervention deadline that is consistent with due process and the policy underlying the applicable regulation;
- Defer the details on format and length of consolidated evidentiary hearings until after rebuttal testimony is submitted, any further petitions to intervene are docketed and a robust meet-and-confer process is completed; and
- Ensure that the mandatory public comment period for the Presiding Member’s Proposed Decision (“PMPD”) is included in the proceedings’ schedules.

² TN # 259330, California Energy Commission Staff and Applicants’ Joint Proposed Schedules (Sept. 27, 2024) TN # 259331, California Energy Commission Staff and Applicants’ Joint Proposed Schedules (Sept. 27, 2024); TN # 259332, California Energy Commission Staff and Applicants’ Joint Proposed Schedules (Sept. 27, 2024) (hereinafter “Joint Proposed Schedule”).

II. DISCUSSION

A. The Committee Should Allow Staggered Release of the FSAs, But Consolidate Testimony, Evidentiary Hearings, and Briefing

CURE agrees with the Joint Proposed Schedule recommending a staggered release of the FSAs while having common deadlines for testimony, evidentiary hearings, and briefings.³ However, CURE disagrees with Applicants' and Staff's approach to evidentiary hearings on a project-by-project basis.⁴

The Presiding Member has the power to regulate the conduct of the proceedings and hearings, including "ordering consolidation or severance of any part, or all, of any proceeding or hearing."⁵ Consolidation has two basic purposes: first, it promotes efficiency by avoiding unnecessary duplication of proceedings,⁶ and second, it avoids inconsistent resolution of the same factual or legal issues.⁷ In determining whether consolidation will further efficiency, considerations include:

- Whether common issues of law or fact predominate over individual issues;
- Whether a party will be burdened by being required to participate in extensive proceedings unrelated to its claims or defenses;
- Whether the trier of fact would be confused by the added complexity resulting from consolidation; and
- Whether inconsistent results are likely if consolidation is denied.

Here, the factors weigh heavily in favor of consolidating these three proceedings.

1. Common Issues of Law and Fact Predominate

Common issues of fact and law are central to all three projects, such as in the areas of water resources, wildlife protection and greenhouse gases ("GHG"), among other resources. For example, CURE, and several other commenters, consistently identified deficiencies in each PSA related to the analysis of cumulative water supply impacts. The PSAs collectively estimate that the three projects will require 13,165-acre feet per year, which amounts to nearly 71% of Imperial Irrigation District's allocation under the Interim Water Supply Policy for Non-Agricultural

³ Joint Proposed Schedule at p. 1.

⁴ Joint Proposed Schedule at p. 1 ("In general, the Applicants and CEC Staff agree that evidentiary hearings should be held on consecutive days and separated by project. The Applicants and CEC Staff agreed that it may be possible to utilize a hybrid approach, where certain issues are held on certain days, but separated by project.")

⁵ 20 Cal. Code Regs. § 1203(c).

⁶ *Mueller v. J.C. Penney Co.* (1985) 173 Cal.App.3d 713, 722.

⁷ *Garden Grove Community Church v. Pittsburgh-Des Moines Steel Co.* (1983) 140 Cal.App.3d 251, 262.

Projects.⁸ The PSAs, however, fail to account for multiple past, present, and reasonably foreseeable future projects, including the Lithium Valley Specific Plan, thereby omitting key factors in the cumulative impact assessment.⁹ This deficiency is not unique to one project but a systemic issue across all three PSAs. The inadequacies in the PSAs' analysis of cumulative water supply impacts affects all three projects and demands a unified approach in hearings.

As another example, CURE identified consistent shortcomings across the PSAs concerning impacts and mitigation measures for numerous special-status species, including the Yuma Ridgway's Rail, California black rail, desert pupfish, burrowing owl, and snowy plover.¹⁰ Each PSA fails to properly address or mitigate these impacts, leading to uniform deficiencies across all three projects.¹¹ These common errors stem from an identical failure to consider species-specific risks in the broader ecosystem, among other deficiencies.

A third example is that all three PSAs suffer from the same problematic GHG emissions analysis. Each PSA relies on an artificially low displacement factor to assess avoided emissions, resulting in unsupported allegations of the projects' environmental benefits.¹² Furthermore, none of the PSAs calculates the lifetime GHG emissions of the projects within the context of California's aggressive state climate policy goals.¹³ The failure to appropriately measure and mitigate GHG impacts has broad implications for all three projects and demand a unified approach in hearings.

As these water supply, biological resources and GHG emissions examples demonstrate, the recurring deficiencies across all three PSAs raise issues that are common across all projects. These shared legal and factual shortcomings that raise the same facts supported by the same experts predominate over individualized issues. Common questions are central to the resolution of these matters. Addressing these deficiencies through a consolidated approach will lead to a more coherent and effective evidentiary hearing.

⁸ TN # 258994, Comments of the California Unions for Reliable Energy on the Preliminary Staff Assessment (Sept. 4, 2024) pp. 82-84 (hereinafter "CURE Elmore North PSA Comments"); TN # 258995, Comments of the California Unions for Reliable Energy on the Preliminary Staff Assessment (Sept. 4, 2024) pp. 82-84 (hereinafter "CURE Morton Bay PSA Comments"); TN # 258993, Comments of the California Unions for Reliable Energy on the Preliminary Staff Assessment (Sept. 4, 2024) pp. 82-84 (hereinafter "CURE Black Rock PSA Comments").

⁹ CURE Elmore North PSA Comments at pp. 79-85; CURE Morton Bay PSA Comments at pp. 77-83; CURE Black Rock PSA Comments at pp. 71-77.

¹⁰ CURE Elmore North PSA Comments at pp. 91-103; CURE Morton Bay PSA Comments at pp. 88-90, 91-94, 100-104; CURE Black Rock PSA Comments at pp. 82-91.

¹¹ *Ibid.*

¹² CURE Elmore North PSA Comments at pp. 42-44; CURE Morton Bay PSA Comments at pp. 43-44; CURE Black Rock PSA Comments at pp. 40-41.

¹³ CURE Elmore North PSA Comments at pp. 44-45; CURE Morton Bay PSA Comments at pp. 44-45; CURE Black Rock PSA Comments at pp. 39-40.

2. Parties Will Be Burdened by Being Required to Participate in Extensive Partially Duplicative Proceedings

The parties involved in all three proceedings are nearly identical (save for the applicants, who are subsidiaries of the same parent company) and would be burdened by being required to participate in three partially duplicative proceedings. Consolidating the hearings would be both practical and efficient, significantly reducing the burden on all parties by eliminating the need to repeatedly bring back the same experts. Furthermore, consolidation would prevent redundant testimony, ensuring that each project has a complete and adequate record without requiring the same information to be elicited multiple times, as would be required if hearings were held on a project-by-project basis.

3. Consolidating Hearings Would Result in No Added Complexity for the Committee

Consolidation would actually reduce complexity for the Committee rather than increase it. Common issues of law and fact predominate, and consolidating the proceedings would result in a more organized and efficient presentation of evidence. Instead of repetitive testimony and duplicative exhibits being presented separately, the Committee would hear the evidence once in a comprehensive manner, allowing for a holistic evaluation of the shared issues. This approach eliminates the need to parse similar information multiple times across fragmented hearings and would simplify the decision-making process.

4. There is a Risk of Inconsistent Results if Consolidation Is Denied

Holding separate evidentiary hearings on a project-by-project basis significantly increases the risk of inconsistent results. Given that the same experts, witnesses, and parties are involved in all three proceedings, separate hearings create the risk that testimony or expert opinions could vary across different hearings, even when the underlying facts remain the same. This may even require additional hearing days to review testimony in transcripts of prior evidentiary hearings and to explain discrepancies. A unified hearing, in contrast, ensures that the same factual and legal standards are applied uniformly across all three projects, reducing the likelihood of contradictory outcomes.

In sum, consolidation allows for a consistent framework to evaluate common issues, ensuring that the trier of fact can make well-informed and uniform decisions. The common issues predominate over individual issues, consolidation will prevent unnecessary duplication of efforts and save costs, and a consolidated approach will promote efficiency and reduce redundancy. CURE urges the Committee to consolidate the proceedings.

CURE strongly recommends that the Committee defer a decision on the details on format and length of consolidated evidentiary hearings until after submission of rebuttal testimony. At that stage, the parties will have a clearer understanding of the key issues in dispute, allowing for a more informed and tailored approach to organizing hearings. Engaging in a robust meet-and-confer process at that point will ensure that the hearings are both efficient and structured in a way that best serves the Committee and all parties. This collaborative approach will promote fairness and ensure the hearings are focused on the most critical matters, optimizing the use of time and resources.

B. The Deadline for Opening Testimony Must Allow Adequate Time to Address Significant New Information in the FSAs

CURE urges the Committee to ensure that the public and the parties have sufficient time to evaluate the FSAs before deciding whether to intervene and before submitting opening testimony, because the FSAs will introduce for the first time a substantial amount of new, critical information. Compressing the timeline would hinder the public and the parties' ability to adequately assess new information in the FSAs, undermining the fairness, integrity, and thoroughness of the entire process.

The FSAs are anticipated to contain information on the projects, impacts and mitigation not yet disclosed in the proceedings, changed project descriptions, and significant updates, including entirely new analyses that were not included in the PSAs. For example, the Applicants have yet to file the necessary information for the Salton Sea impact assessment. The FSAs could be the first opportunity for the public and parties to review critical issues related to impacts on the Salton Sea, unless Staff recirculates the PSA for public review and comment before releasing the FSA. The Applicant is considering reorientation or relocation of the cooling towers for one or more projects.¹⁴ This change would necessitate new modeling and analyses which are currently unknown and not available for review.¹⁵

Staff anticipates updates to the transmission analysis. The Imperial Irrigation District is revising a System Impact Study, including an analysis of and mitigation related to downstream impacts of a 70-mile, 20-mile, and 15-mile line,¹⁶ none of which has been made available in these proceedings or in response to Public

¹⁴ See Preliminary 2nd Staff Assessment Technical and Mitigation Workshop (Sept. 19, 2024), available at https://energy.zoom.us/rec/play/CB3h_y78uiUs7PGblir6COGMIAxxNzjuBW7_QmHB_eNYIIY1j7YYhpD0IMsbayTPj4YIZjekaAg5Fg4.5E0voHAahr0OfNDs?canPlayFromShare=true&from=share_recording_detail&continueMode=true&componentName=rec-play&originRequestUrl=https%3A%2F%2Fenergy.zoom.us%2Frec%2Fshare%2FBH3NG76aYCvPHyL1P7WfpdhFeGnWWoWnmBx-Y3H5sjyDz5VVpd8z_RVTzWwq8sfq.uBaWJnG8OeQo1OZW.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

Records Act requests to date. Staff and Applicants indicated that key assessments, such as the analysis of the reduction of agricultural return flows to drains and canals that empty into the Salton Sea – which impacts special-status species like the desert pupfish and the Yuma Ridgway’s Rail – are still pending.¹⁷ These are just a few examples of the incomplete information available in these proceedings to date.

Providing adequate time to respond to new information is not just a procedural necessity—it is a matter of due process. Rushing the deadline for opening testimony would unfairly disadvantage the public and the parties by limiting their ability to review the FSAs, decide whether to intervene, prepare testimony, and respond effectively. This imbalance would create an incomplete record, skewed arguments, and could ultimately result in flawed decision-making. Denying the public and the parties adequate time to fully examine and respond to the new information on the projects being considered by the Commission would undermine the fundamental fairness of the proceedings.

Furthermore, the technical nature of the assessments requires parties to consult with experts, who in turn must analyze the findings and integrate them into the testimony. This process is time-consuming and requires collaboration between legal teams, technical consultants, and stakeholders to ensure that the testimony presented is accurate, well-supported, and fully addresses the new information presented in the assessments. A compressed timeline would prevent the necessary level of review and collaboration, undermine the quality of the testimony submitted.

CURE urges the Committee to provide parties at least 45 days after the release of the final FSA to submit opening testimony. Scheduling at least 45 days to prepare opening testimony after the last FSA is released will foster a fair process that enables the public and the parties an opportunity to review the projects being proposed and prepare testimony.

C. The Joint Proposed Schedule’s Intervention Deadline Is Inconsistent with Due Process and the Policy Underlying the Applicable Regulation

CURE opposes the Joint Proposed Schedule recommendation that the last day to file a petition to intervene be October 16, 2024.¹⁸ Given that the FSAs will contain never-before-seen information on project description, impacts’ analysis, mitigation and compliance with LORS, and the Joint Proposed Schedule does not propose evidentiary hearings until mid-2025, setting a deadline for intervention before release of the FSAs and 7 months in advance of the deadline contemplated by

¹⁷ *Ibid.*

¹⁸ Joint Proposed Schedule at p. 2.

the regulations would be inconsistent with due process and the policy underlying the applicable regulations.

California Code of Regulations, title 20, § 1211.7 allows a petition for intervention to be filed “no later than the deadline established by the presiding member, or if none is established, at least 30 days before the first evidentiary hearing in the proceeding.” Setting an early deadline – before release of the FSAs - would unfairly exclude members of the public who may seek intervention based on new or substantially revised information in the FSAs. By setting a deadline before this information is available, the Committee risks denying key stakeholders the opportunity to participate meaningfully in the proceedings.

Furthermore, it would be inconsistent with the policy underlying the regulation, which by default allows intervention at least 30 days before the first evidentiary hearing. The regulatory timeline for intervention was crafted to balance efficiency with fairness, allowing parties to make informed decisions about their participation. Deviating from this established framework without a compelling reason to cut off intervention early is inconsistent with the underlying policy and sets a precedent that may be seen as arbitrary and unjust. Adhering to the normal regulatory timeline provides predictability and ensures that the process remains transparent and accessible. Evidentiary hearings are normally when Staff’s environmental review process should be complete. Here, the project description is still changing and some of the environmental analysis has not even started, much less been released for public review.

CURE opposes the proposal to set a deadline for intervention prior to release of the FSAs. Instead, CURE recommends that the Committee adhere to the normal default timeline provided for by the regulations and require that any petition for intervention be filed no later than 30 days prior to the start of evidentiary hearings.

D. The Briefing Deadlines Must Allow Adequate Time for Simultaneous Briefing on Three Complex Projects and Be Tied to the Docketing of Evidentiary Hearing Transcripts

CURE agrees that the deadline for opening briefs should be based on the docketing of the evidentiary hearing transcripts. However, CURE opposes the Joint Proposed Schedule proposed deadlines for opening briefs just 2 weeks after docketing of evidentiary hearing transcripts, with reply briefs due 2 weeks later.¹⁹ This timeline is insufficient to enable clear briefing with proper citations of the numerous complex issues raised by the three projects. Each of these three projects involves substantial volumes of documentation, including transcripts and evidence. Preparing briefs for these three projects simultaneously requires more than a rushed, superficial review of the materials. Parties must analyze, synthesize, and

¹⁹ Joint Proposed Schedule at p. 3.

respond to an enormous amount of information. This includes carefully distinguishing between shared issues across the projects and addressing the specific, nuanced details unique to each one. A 2-week deadline simply does not provide enough time to adequately process the material, address the legal and factual distinctions of each project, and present coherent, well-supported arguments.

CURE strongly urges the Committee to schedule opening briefs due at least 30 days after docketing of evidentiary hearing transcripts, with reply briefs due 30 days later. Providing at least 30 days ensures that briefs for each project can be adequately developed, avoiding errors or incomplete analysis that would otherwise undermine the quality of the proceedings. In contrast, allowing only 2 weeks for simultaneous briefing on three projects disproportionately burdens parties with fewer resources, preventing them from fully developing and articulating their arguments. It also disproportionately burdens parties with more complex presentations of evidence and legal arguments that reflect the depth and significance of the issues raised by the three proposed geothermal power plants. Complex cases often require coordination with experts, careful review of intricate factual records, and significant legal research. By providing at least 30 days to prepare opening briefs, all parties—regardless of their resources—may have a fair opportunity to present thorough, well-considered briefs.

E. The Joint Proposed Schedule Does Not Include the Mandatory Public Comment Periods Following Publication of the Presiding Member’s Proposed Decision (and Revised Proposed Decision, If Necessary)

The Joint Proposed Schedule does not identify the mandatory comment period on the PMPD. Pursuant to California Code of Regulations, title 20, § Section 1745.5(c), “[a]ny person may file written comments on the presiding member’s proposed decision. The presiding member shall set a comment period of at least 30 days from the date of the filing.” Therefore, the Committee’s schedule must include a 30-day public comment period following publication of the PMPD.

In addition, the Joint Proposed Schedule contemplates an errata to the PMPD (if necessary).²⁰ Under California Code of Regulations, title 20, § 1746, “[a]fter the conclusion of the comment period on the presiding member’s proposed decision, the presiding member, in consultation with the other committee member, may prepare a revised proposed decision. If a revised proposed decision is prepared, it shall be filed and subject to a 15-day comment period before consideration by the full commission.” Therefore, any schedule must incorporate the mandatory 15-day comment period if a revised PMPD is contemplated and issued.

²⁰ Joint Proposed Schedule at p. 3.

III. CONCLUSION

For the reasons set forth herein, CURE strongly urges the Committee to adopt CURE's proposed schedule to:

- Consolidate the three proceedings after the staggered filing of FSAs;
- Provide adequate time for parties and the public to review and evaluate significant new information on the project description, impacts and mitigation that will be disclosed to the public for the first time in the FSAs.
- Provide adequate time for parties and the public to review and address highly technical and other responses to comments and evaluate anticipated significant new information in the FSAs;
- Set an intervention deadline that is consistent with due process and the policy underlying the applicable regulations;
- Defer the details on format and length of consolidated evidentiary hearings until after rebuttal testimony is submitted, any further petitions to intervene are docketed and a robust meet-and-confer process is completed; and
- Ensure that the mandatory public comment period for the PMPD is included in the proceedings' schedules.

Event	Days	Approximate Deadline
Imperial County Air Pollution Control District Final Determination of Compliance	TBD	TBD
Elmore North Final Staff Assessment	February 5, 2025	February 5, 2025
Morton Bay Final Staff Assessment	February 19, 2025	February 19, 2025
Black Rock Final Staff Assessment	March 5, 2025	March 5, 2025
FSA Workshops (if needed)	14 days after last FSA	March 19, 2025
Opening Testimony	45 days after last FSA	April 21, 2025
Rebuttal Testimony	30 days after Opening Testimony	May 21, 2025
Meet and Confer	14 days after Rebuttal Testimony	June 4, 2025
Last Day for Petitions to Intervene	30 days before Evidentiary Hearings	May 25, 2025
Prehearing Conference Statement, Witness List, and Exhibit List	7 days before Evidentiary Hearings	June 16, 2025

PHC Hearing	5 days before Evidentiary Hearings	June 18, 2025
Evidentiary Hearings	33 days after Rebuttal Testimony Hearing	June 23, 2025
Opening Briefs	30 days after Evidentiary Hearing Transcripts	TBD
Reply Briefs	30 days after Opening Briefs	TBD
Presiding Members Proposed Decision	30 days after Reply Briefs	TBD
PMPD Hearing	25 days after PMPD	TBD
PMPD Comments Due	30 days after PMPD	TBD
Revised PMPD	14 days after PMPD Comments	TBD
Revised PMPD Comments	15 days after Revised PMPD	TBD
Final Decision Hearing	TBD	

Dated: September 30, 2024

Respectfully submitted,

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/s/

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